

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

DAVID HARRIS, CHRISTINE)
BOWSER, and SAMUEL LOVE,) Greensboro, North Carolina
) October 13, 2015
Plaintiff,) 9:01 a.m.
)
vs.)
)
PATRICK MCCRORY, in his)
capacity as Governor of North) Case No. 1:13CV949
Carolina, NORTH CAROLINA STATE)
BOARD OF ELECTIONS, and JOSHUA)
HOWARD, in his capacity as)
Chairman of the North Carolina)
State Board of Elections,)
)
Defendants.)
)

TRANSCRIPT OF BENCH TRIAL VOLUME I OF III HELD BEFORE
THE HON. **WILLIAM L. OSTEEN, JR.**, UNITED STATES DISTRICT JUDGE
THE HON. **MAX O. COGBURN, JR.**, UNITED STATES DISTRICT JUDGE
THE HON. **ROGER L. GREGORY**, UNITED STATES DISTRICT JUDGE

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24 Proceedings reported by stenotype reporter.
25 Transcript produced by Computer-Aided Transcription.

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P R O C E E D I N G S

(At 9:01 a.m., proceedings commenced.)

JUDGE OSTEEEN: All right. Good morning, everyone. All the lawyers know who everyone is, but just so that everybody understands, Judge Gregory, being the gentleman that he is, is seated to my right. It will be the only time that I'm seated in the middle of a panel with Judge Gregory seated to my right, and Judge Cogburn is to my left.

So we'll go -- we'll calling for trial Case No. 13CV949, Harris, et al., versus McCrory, et al. So I'll start with the plaintiffs. If you will, just state for the record who is seated at counsel table at this point.

MR. HAMILTON: Good morning, Your Honor. Kevin Hamilton for the plaintiffs. With me today is he Eddy Speas to my immediate right, and to his right John O'Hale representing the plaintiffs.

JUDGE OSTEEEN: All right. And the plaintiffs are ready to proceed?

MR. HAMILTON: We are, Your Honor.

JUDGE OSTEEEN: All right. Mr. Farr?

MR. FARR: Thank you very much, Your Honor. We appreciate you being here today. My name is Tom Farr. I'm from the Raleigh office of Ogletree Deakins. With me is Alex Peters. He's from the North Carolina Attorney General's Office. Next to Mr. Peters is Phil Strach, who is my law

1 partner at Ogletree Deakins, and at the far end of the table is
2 our ace, super duper paralegal Philen Alexander who we've
3 stolen from the Charlotte office and made him be here today
4 even though he has more interesting things and more pleasurable
5 things to do in Charlotte.

6 JUDGE OSTEEEN: All right. Well, welcome everyone.
7 And defendants are ready to proceed, Mr. Farr?

8 MR. FARR: Yes, we are, Your Honor.

9 JUDGE OSTEEEN: All right. Well, we will proceed
10 ahead with this hearing. Yesterday, the parties filed a
11 stipulation. I think all of us have seen that and reviewed
12 that. As I indicated at this point in time, we are denying the
13 motion to stay without prejudice.

14 We have two motions in limine that are pending. We
15 will address those briefly further once we get to that expert
16 testimony, and at this point I anticipate that we will be --
17 whether you want to call it denying the motion in limine
18 without prejudice or reserving judgment on it, we will probably
19 go ahead and hear the testimony in its entirety subject to
20 whatever objections remain. We'll discuss that further when
21 the experts are called.

22 Will either one of those experts be called today, do
23 you think, Mr. Hamilton?

24 MR. HAMILTON: It's possible that Dr. Ansolabehere
25 might be called by the end of the day. It's possible.

1 JUDGE OSTEEEN: Okay. Well, we'll see how we get
2 along. Once you get ready to call one of those experts, we'll
3 talk about procedures related to that at that particular time.

4 All right. The parties may proceed with their
5 opening statements. The plaintiff is recognized.
6 Mr. Hamilton?

7 MR. HAMILTON: Thank you, Your Honors. And for the
8 record, it's Kevin Hamilton again. I appear on behalf of the
9 plaintiffs in this litigation, David Harris and Christine
10 Bowser.

11 The Equal Protection Clause of the Fourteenth
12 Amendment forbids race-based redistricting absent a compelling
13 state interest, and even then only when narrowly tailored to
14 meet that state interest. The evidence will show that in 2011
15 the North Carolina General Assembly used race as the
16 predominant factor in drawing North Carolina's 1st and
17 12th Congressional District, had no compelling state interest
18 for doing so, and in all events failed to narrowly tailor those
19 districts to that state interest.

20 The evidence will show that the General Assembly
21 manipulated these districts by moving voters in and out of the
22 districts based on the color of their skin. With respect to
23 CD 1, the 1st Congressional District, racial predominance is
24 really not in serious dispute. The General Assembly increased
25 the number of African-Americans in the district with the

1 express goal of creating a majority-black district, what they
2 called a Voting Rights Act District, all on the theory that
3 doing so is somehow required by the Voting Rights Act. There's
4 no dispute what was going on here. The defendants baldly admit
5 their purpose was to increase the black voting-age population
6 to 50 percent plus one or higher.

7 With respect to the 12th Congressional District, the
8 General Assembly drew the district to include the heavily
9 African-American population of Guilford County on the theory
10 that doing so was required by Section 5 to prevent
11 retrogression. Again, this was hardly a secret. The
12 legislators explained that they drew the proposed 12th
13 Congressional District, and I quote, At a black voting-age
14 level that is above the percentage of black voting-age
15 population found in the current district to ensure
16 preclearance, closed quote, under Section 5 of the Voting
17 Rights Act. That's Plaintiff's Exhibit 68.

18 The evidence plaintiffs will put before the Court
19 come from the mouths of the defendants themselves, their
20 emails, their statements on the floor of the General Assembly,
21 their documents.

22 In addition, plaintiffs will call several witnesses.
23 First this morning, Senator Dan Blue, a member of the General
24 Assembly, who observed firsthand the enactment of this flawed
25 plan, will testify. The current incumbents in both of these

1 two districts, Representative Watt and Representative
2 Butterfield, will testify. Both of them opposed the plan as
3 did the entire Black Caucus in the General Assembly, and both
4 of them informed the defendants that the plan was legally
5 flawed and unnecessary as a practical matter.

6 And we will present two expert witnesses. The first
7 is Dr. David Peterson, and the second is Dr. Steven
8 Ansolabehere. Dr. Peterson analyzed precincts on the borders
9 of these districts in the *Cromartie* litigation in 2000 here in
10 North Carolina, and the Supreme Court specifically discussed
11 and relied on his analysis in its decision in that case in
12 finding that race did not predominate in the construction of
13 the districts at that time. Dr. Peterson will repeat his
14 analysis here but reaches the opposite conclusion using the
15 same methodology, but different data. And then finally,
16 Dr. Ansolabehere will testify using several different analyses
17 that race predominated in the drawing of these districts.

18 Together, the evidence will show that race, not
19 politics, was the predominant purpose of this redistricting
20 plan from start to finish and that neither district was
21 narrowly tailored to achieve a compelling state interest, and,
22 as a result, the plans necessarily fail constitutional muster
23 and must be invalidated.

24 Now, I know the Court has already had the benefit of
25 the parties' briefing in the trial brief before the proceeding

1 got started, so rather than repeat or do a dramatic recitation
2 of the trial brief that you've already read, I thought I would
3 just emphasize a couple of -- a handful of key facts that we
4 believe will be clear from the record and will be established
5 during the course of the trial.

6 First, the evidence will show that the incumbent
7 representatives in the 1st and 12th Congressional Districts
8 were safe in winning re-election by large margins of victory.
9 In the jury box, we've blown up the table showing the election
10 results and the black voting-age population. We'll also be
11 showing that on the screen during the course of the trial
12 showing the black voting-age population and then the election
13 results, the winning margin.

14 Congressional District 1 was first drawn in its
15 present configuration in 1992. Between 1997 and 2001, the
16 black voting-age population fell below 50 percent. It has
17 remained below 50 percent since that time until -- all the way
18 up until this redistricting exercise. CD 12 is similar. From
19 1997 to 2011 it had a black voting-age population well below
20 50 percent.

21 Yet, despite the fact that neither district was a
22 majority African-American district, African-American candidates
23 of choice easily and consistently won re-election in an
24 unbroken string of clear and overwhelming electoral victories.
25 How did that happen? It happened because white voters crossed

1 over to vote with African-American voters to elect those
2 candidates. It's simple now. That's what happened. And
3 that's a terrific result, and that's one we should all be proud
4 of and applaud.

5 But rather than applaud this post racial success in
6 these two districts where white and black voters united to
7 elect candidates of choice, the North Carolina General Assembly
8 chose instead to dismantle both districts and to sort voters by
9 the color of their skin packing black voters into CD 1 and
10 CD 12 and astonishingly now stand before this Court and assert
11 that the Voting Rights Act, of all things, somehow required
12 dismantling these two districts sorting voters by race and
13 creating black and white electoral districts. To put it
14 delicately, that's a decidedly odd reading of the Voting Rights
15 Act of 1965.

16 Second, the record will demonstrate that neither
17 district has been challenged under the Voting Rights Act at any
18 point in the last 20 years, not once. Both districts have been
19 consistently precleared pursuant to Section 5 of the Voting
20 Rights Act, and neither has been the subject of a lawsuit under
21 Section 2. In fact, the evidence will show there's been no
22 state-wide redistricting Section 2 lawsuit filed in over three
23 decades in this state, and for good reason. As the historical
24 record vividly demonstrates, white and blacks in these
25 districts have voted for the same candidate in numbers

1 sufficient to elect the African-American candidate of choice.

2 In other words, in the words of *Gingles*, the white
3 majority did not, quote, vote as a bloc to the African-American
4 candidates of choice, closed quote. Precisely the opposite
5 happened. Significant crossover voting supporting
6 African-American preferred candidates occurred. On such a
7 record, there's really no credible argument that baldly
8 increasing the black voting-age population levels of these
9 districts is somehow required to avoid liability.

10 Third, the evidence will show that the General
11 Assembly used a mechanical 50 percent black voting-age
12 population floor in drawing these two districts. The evidence
13 is clear, direct, and undisputed.

14 With respect to CD 1, defendants baldly admit their
15 goal of achieving a racial threshold of 50 percent black
16 voting-age population. Senator Rucho and Representative Lewis
17 labeled CD 1 a "VRA district" and explicitly instructed
18 Dr. Hofeller to draw the district to increase the black
19 voting-age population to more than 50 percent. The point's
20 critical, and the point is entirely undisputed. Dr. Hofeller
21 will admit it from the stand.

22 With respect to CD 12, Senator Rucho and Lewis
23 conceded that it was not what they called a "VRA district," but
24 they pointed to Guilford County, which is a covered
25 jurisdiction under Section 5, or was a covered jurisdiction

1 under Section 5 of the Voting Rights Act, as a reason to ensure
2 that the existing black voting-age populations in the district
3 be maintained or increased. This is plain constitutional
4 error. That score is now settled beyond dispute by the Supreme
5 Court's recent decision last year in the *Alabama* case which
6 flatly condemned the use of such mechanical racial targets and
7 by the recent decision in the United States District Court for
8 the Eastern District of Virginia decided just last year in *Page*
9 *versus Virginia State Board of Elections* which similarly struck
10 down the use of a 55 percent black voting-age population
11 threshold for Virginia's Third Congressional District.

12 But even if the direct evidence were not so clear and
13 undisputed, the circumstantial evidence makes clear what's
14 going on. Both districts -- and I've blown up easels. Here is
15 CD 1, and there is CD 12 -- make a mockery of traditional
16 redistricting principles. Whether measured by split counties
17 or split VTDs or highly irregular shapes, you can take a look
18 what's called the "interocular test" and see that these are
19 unusually shaped districts.

20 Fourth, although Senator Rucho and Representative
21 Lewis pointed to the Supreme Court's decision in *Strickland*
22 *versus Bartlett* as requiring at least 50 percent BVAP, that's
23 the explanation, to be clear, that the defendants will offer
24 that *Strickland* somehow required this. The case doesn't say
25 anything of the sort. *Strickland* was a badly splintered

1 Supreme Court decision. The plurality opinion only had three
2 justices sign on to it, and those three justices explicitly
3 recognized that where, as here, there's substantial crossover
4 voting, it is, by definition, impossible to establish liability
5 under Section 2 because of the absence of racially polarized
6 voting sufficient to defeat the African-American candidate of
7 choice from being elected. How do we know that's not existing
8 here? Those tables are a vivid testament to that, 20 years of
9 African-Americans every year being elected year after year.

10 The Court went out of its way in *Strickland* to point
11 out the irony if the Voting Rights Act interpreted to entrench
12 racial differences. Here's what they said, quote: Crossover
13 districts are by definition the result of white voters joining
14 forces with minority voters to elect their preferred candidate.
15 The Voting Rights Act was passed to foster this cooperation,
16 closed quote. The statute most assuredly does not require
17 balkanization of voters on the basis of race, particularly
18 where, as here, there is no evidence of racial bloc voting that
19 would deny minority voters the opportunity to elect the
20 candidate of their choice.

21 Fifth, the evidence will show that 50 percent black
22 voting-age rule predominated over all other criteria, save one
23 man, one vote, one person, one-vote. Defendants apparently
24 intend to present evidence that they considered political
25 factors in drawing these maps, and they may well have done so,

1 but only after satisfying the nonnegotiable goal of creating
2 majority minority districts. It was hardly an accident that
3 both of these districts ended up above 50 percent black
4 voting-age population. That was the whole point of the
5 exercise.

6 Dr. Hofeller will testify that he considered black
7 voting-age population levels when drawing CD 1, but he will
8 also testify that as to CD 12 he only used the 2008
9 presidential election results to draw CD 12, and he used those
10 results in order to favor Republicans and disfavor Democrats.
11 But using a racially charged election involving the first
12 African-American major party candidate for the United States
13 presidency in US history, if you use that as the measuring
14 stick, that hardly shelters what's going on here. The 2008
15 presidential election results in CD 12 were much more closely
16 coordinated with race than party affiliation as
17 Dr. Ansolabehere will testify.

18 Sixth, the evidence will show that the defendants
19 cannot identify a compelling state interest to justify the use
20 of race in drawing these districts. Defendants contend that
21 the General Assembly's alleged goal of complying with Section 2
22 and Section 5 of the Voting Rights Act justified its use of
23 race in drawing these districts, but the only way to survive
24 strict scrutiny since the Supreme Court's decision in *Miller*
25 *versus Johnson* is to ensure that the plans were actually -- is

1 to prove that the plans were actually required by Section 5.

2 But there's no plausible argument here that either
3 Section 2 or Section 5, properly interpreted, required a
4 50 percent black voting-age population. There's no safe
5 harbor, as the defendants like to say. Both of these districts
6 were already performing for minority preferred candidates with
7 large winning majorities. There was no need to increase those
8 to levels that would be embarrassing to even Eastern European
9 dictators.

10 The question under Section 5 is whether there's been
11 retrogression, that is, whether the proposed plan would reduce
12 minority voters' effective ability to elect candidates of their
13 choice. It most assuredly does not command a state to match,
14 much less significantly increase, the preexisting level of
15 minority population without regard to the minority communities'
16 actual ability to elect. If that's what the General Assembly
17 thought or was advised, it was just wrong.

18 If the Supreme Court's decision last year in *Alabama*
19 means anything, it means that this is a district-specific
20 analysis and mechanical, numerical thresholds are forbidden.
21 The burden is on the state to establish that it had a strong
22 basis in evidence -- that's the quote -- strong basis in
23 evidence for believing that Section 5 required it to draw these
24 districts with this level of black voting-age population; and
25 in the absence of such a showing, the plan necessarily fails

1 the strict scrutiny analysis. Here, the defendants will fail
2 in that showing.

3 Defendants claim that racially polarized voting
4 exists generally in North Carolina, but that certainly doesn't
5 establish racially polarized voting in these two specific
6 districts; and, as *Alabama* teaches, this is an analysis that is
7 district-specific, not state-wide. That's the whole reason for
8 the reversal in *Alabama*. The analysis there was done on a
9 state-wide level, and the Court reversed and said you can't do
10 it that way. It's done state-wide, done with a flat black
11 voting-age population threshold.

12 In the absence of such a district-specific analysis,
13 it's simply impossible to have a strong basis in evidence for
14 believing that either Section 2 or Section 5 required
15 increasing the number minority voters to achieve the 50 percent
16 BVAP in these districts, and the evidence will show that the
17 authors of the enacted plan simply declined to conduct such an
18 analysis and chose instead to guess -- set a rule of 50 percent
19 and pack black voters into these districts.

20 That approach, no matter how well-intentioned -- and
21 this is not an intent case. We don't have the burden and don't
22 intend to try and show that anyone was motivated by ill-intent
23 here. No matter how well-intentioned, using this approach to
24 draw these districts cannot be considered a strong basis in
25 evidence for believing that Section 5 required them. Simply

1 invoking the name of the Voting Rights Act without actually
2 conducting an analysis, as required by the statute, cannot
3 inoculate race-based redistricting from constitutional
4 scrutiny.

5 Seventh, even if the defendants could identify
6 compelling state interest, they can't meet their burden of
7 proving that these districts were narrowly tailored to meet
8 that interest. The Supreme Court long ago declared the
9 reapportionment plan, quote, would not be narrowly tailored to
10 the goal of avoiding retrogression if the state went beyond
11 what was reasonably necessary to avoid retrogression. That's
12 the *Shaw* case from this very state.

13 But that's exactly the evidence that will be placed
14 before you in this case. Both districts consistently
15 cleared -- consistently elected African-American candidates of
16 choice by wide margins. No straight-faced argument can be
17 advanced that either needed to have their black voting-age
18 population increased in order to prevent retrogression. As the
19 Court declared in *Shaw*, covered jurisdictions do not have carte
20 blanche to engage in racial gerrymandering in the name of
21 retrogression. That's exactly what happened here.

22 Now, before I sit down, let me just mention. There
23 is a parallel state court litigation challenging these
24 districts. It is pending before the North Carolina Supreme
25 Court. The state trial court in that case issued a decision

1 before the US Supreme Court issued the decision in *Alabama*,
2 and, as a result, the Court failed to review these two
3 districts on a district-specific basis and didn't have the
4 teaching of *Alabama* to assist it in resolving the cases, but
5 that's the status of the stated Court litigation.

6 The Supreme Court emphasized in its *Miller* decision
7 that, quote, the essence of the Equal Protection claim
8 recognized in *Shaw* is that the state used race as a basis for
9 separating voters into districts without any compelling state
10 interest necessitating such race-based redistricting.

11 The *Strickland* plurality decision as well condemned
12 racial balkanization where minority communities had
13 successfully joined forces with white voters to achieve
14 electoral success, and *Strickland* noted the irony if the
15 shining star of the Civil Rights Act -- shining star of the
16 Civil Rights movement were interpreted to actually require
17 separation of voters into districts according to the color of
18 their skin.

19 The *Shaw* court condemned the redistricting plan there
20 because they, quote, threatened to carry us further from the
21 goal of a political system in which race no longer matters, a
22 goal that the Fourteenth and Fifteenth Amendment embody and to
23 which the nation continues to aspire, closed quote.

24 So, too, will the evidence condemn the plans before
25 this Court. The evidence will show that the General Assembly

1 used race, not politics, as a predominant factor in drawing
2 these districts and that this constitutionally suspect use of
3 race was neither required by a compelling state interest nor
4 narrowly tailored to further any such interest.

5 At the conclusion of the trial, the plaintiffs will
6 ask this Court to invalidate these two districts and to
7 implement appropriate, immediate, and effective remedies.
8 Thank you, Your Honors.

9 JUDGE OSTEN: All right. Give me just a moment.
10 All right. Mr. Farr, or whoever is ready to proceed for the
11 defense.

12 MR. FARR: I am, Your Honor. Suffice it to say, Your
13 Honor, that we have strong disagreements with the plaintiffs in
14 the way they've outlined the facts and the applicable law in
15 the case.

16 What this case is really about, Your Honors, is it's
17 a political case. The legal fees in this case are being paid
18 by something called the National Democratic Voting Rights Trust
19 Fund who are bringing cases like this all across the United
20 States. The reason why this case was brought is because a
21 Democratic General Assembly enacted the 2001 Congressional Plan
22 in a way that favored the Democratic Delegation, and the 2011
23 General Assembly enacted a plan that favored the Republican
24 Delegation. The only way that the plaintiffs, who we contend
25 are bound by the prior decision in the *Dickson* case, and their

1 counsel in the National Democratic Voting Rights Trust Fund can
2 try to get these plans thrown out is through the legal theories
3 they're alleging in this case which were also litigated in the
4 *Dickson* case.

5 So we disagree with plaintiffs' counsel. We do not
6 think the evidence will show that race was the predominant
7 motive for either one of these districts. District 12 was
8 drawn based upon political characteristics as it had been done
9 in 1997 and in 2001. The difference between District 12 is
10 that in '97 and 2001, it was drawn by a Democratic legislature
11 to be a strong Democratic district, but enough Democratic votes
12 were shaved out of the district to create strong adjoining
13 Democratic districts such as the former Senate -- or
14 Congressional District 13. You'll see a picture of that. It
15 is at least as bizarre looking as any of the other
16 congressional districts that have been drawn in North Carolina.
17 It stretched from Raleigh to Guilford County. It was drawn by
18 the Chairman of the Senate Redistricting Committee, Brad
19 Miller, who then ran that district and was elected to Congress
20 in that district.

21 In the Mecklenburg area, Mecklenburg County was added
22 to the 8th Congressional District in the 2001 plan in order to
23 create a stronger Democratic 8th District which ultimately
24 resulted in the defeat of the Republican incumbent in that
25 district, Robin Hayes, by Congressman Kissell. So this case is

1 about politics.

2 If the Court finds that the 1st District -- if you
3 find that the race was the predominant motive in the 1st
4 District, then we believe the evidence will show that there was
5 a compelling governmental interest, that there's a substantial
6 basis in the evidence to support that. I'll go over some of
7 that as I walk through a history of the Congressional Plan, but
8 I'm not really sure how plaintiffs can say that the district --
9 that either the legislature or the Court in *Dickson* did not do
10 a district-by-district analysis.

11 The legislature had two polarization experts that
12 studied racially polarized voting in all of the counties in
13 which the 1st Congressional District is located, and this now
14 brings me, Your Honors, to a couple map notebooks that are
15 going to be helpful to the Court. I'm not going to hand this
16 one up right now, but Exhibit 22 is the map notebook that the
17 parties provided the three-judge court in the *Dickson* case; and
18 what this notebook has in it, it has all of the so-called
19 benchmark plans, the benchmark plans being the plans that were
20 in place during the 2010 general election. So in the case of
21 the congressional district, it's the 2001 Congressional Plan
22 which is also known as the zero deviation plan. It has the
23 2003 Senate plan, and it has the 2009 House plan.

24 The House plan was amended in 2009 because of the
25 case which we've cited to the Court called *Strickland v.*

1 *Bartlett*, and we do think that a case says that if you're going
2 to draw a VRA district, a Section 2 district, the black
3 voting-age population needs to be above 50 percent. That is
4 how the state interpreted that case, and I know that one of the
5 dissenting judges in *Strickland* interpreted that case as
6 stating that the legislature should create VRA districts that
7 are above 50 percent.

8 So what else is in this notebook, Your Honors, are
9 all of the alternative proposed maps for the Congress, for the
10 House, for the Senate, and included in this notebook is what we
11 call the "stat pack" which has got all of the census categories
12 in it. It has election results for all the districts. This
13 will make more sense to you when you actually see the notebook.

14 But a point that's very important, Your Honor, is
15 that this notebook is based upon the 2010 Census; and, during
16 the course of this case, you'll discover that there's two
17 different categories to measure black population. There's a
18 category called "single-race black population," and there's a
19 category that the Census Bureau calls "any part black
20 population." "Any part black population" is where the person
21 reports themselves as being black and some other race in
22 addition to being black.

23 So those are two different categories. That's
24 important to understand because when we go to the charts that
25 the plaintiffs have over here, and we'll point this out when we

1 get a chance, they talk about the black population in these
2 districts, the black voting-age population. I've looked at
3 these charts just before we started today, and the black
4 voting-age population they list for the 2011 1st and
5 12th Districts is from the 2010 Census, and it's the any part
6 black voting-age population. That term "any part black
7 voting-age population" is defined in this notebook with the
8 phrase "total black population." So it's called "total black
9 voting-age population" in this notebook. The Census calls it
10 "any part black population."

11 So for the black voting-age population, they've
12 listed in their charts for the 2010 1st and 12th Districts --
13 they've used the 2010 Census "any part black." For the
14 population that they've listed for the 2001 Congressional
15 Districts, they've used "single-race black," and they've used
16 the 2000 Census. So they're comparing apples to oranges in two
17 different ways. Just as a minor fact, Your Honor, if we're
18 going to look at single-race black population, the
19 12th District was not drawn over 50 percent. It's slightly
20 below 50 percent.

21 So that's the importance of this notebook. Now,
22 there's another notebook I would like to hand up to the Court
23 if I might.

24 JUDGE OSTEEEN: Now?

25 MR. FARR: Yes, because it's part of my opening

1 statement.

2 JUDGE OSTEEEN: Okay.

3 MR. FARR: And I think it will help the Court. This
4 is Exhibit 126, Your Honor, and this is important to review
5 this with the Court now to give the Court the historical
6 perspective, and I've got extras if the law clerks would like
7 one.

8 JUDGE OSTEEEN: All right. Keep it to an overview,
9 Mr. Farr.

10 MR. FARR: What's that?

11 JUDGE OSTEEEN: Keep it to an overview if you can.

12 MR. FARR: I will, Your Honor.

13 I just want to flip through the tabs in this quickly,
14 Your Honor. Tab 1 is the original version of the 1st District
15 that was enacted in 1991. It was precleared by the Justice
16 Department, and the Justice Department objected to the failure
17 of the state to create a second majority-black -- or majority
18 minority district running from Charlotte to basically
19 Wilmington.

20 And it's important, Your Honor, that you understand
21 some terms for voting rights districts. A majority-black
22 district is where the black population is in the majority. A
23 coalition district is where whites are in the minority, there
24 is no majority white population, and blacks and, say, Hispanics
25 create the majority. Then there's something called a crossover

1 district. That's where whites are actually in the majority.

2 Counsel for the plaintiff referred to the 1st
3 District as a crossover district in his opening argument.
4 That's not correct. In none of these plans from '91 through
5 the present, the 1st District has never been a white crossover
6 district. Whites have never been in the majority in that
7 district. It originally started off as a majority-black
8 district in population and voting-age, and then I believe by
9 the time of the '97 Plan, the 1st District was a majority-black
10 in population and a plurality voting age. So make sure you
11 understand those terms. There's never been a majority-white
12 population in the 1st District that could vote as a black to
13 defeat the candidate of choice of the African-American
14 population.

15 So going through this notebook quickly, Your Honor,
16 under Tab 2 is the '92 Congressional Plan. This was the plan
17 that was the subject of the litigation in the *Shaw* case. The
18 12th District -- it's hard to read on this, but basically it
19 stretched from Gastonia to Durham along the interstate
20 highways. The 1st District was in Eastern North Carolina.
21 There was never a ruling in *Shaw* on the 1st District. There
22 was no plaintiff withstanding to challenge the 1st District, so
23 the Court in *Shaw* never ruled on the 1st District, but they did
24 declare the 12th District unconstitutional as illegal racial
25 gerrymandering.

1 So then if you turn to the next tab, Tab 3, Your
2 Honors, this was the plan that the state enacted after *Shaw* in
3 1997; and as you're looking at these plans, I want you to note
4 we heard from counsel about how horrible this district looked.
5 This district looks no different than any other versions of the
6 1st District that have ever been enacted. There was historical
7 precedence for this district, and having beautiful appearance
8 was never a criteria that any of the General Assemblies
9 followed. I mean, I really would like to have counsel get up
10 here and explain to me how any of these versions of the 1st
11 District passed the interocular test in a way that's better
12 than the 2011 1st District.

13 Now, the point on the '97 plan, Your Honor, is the
14 court -- the district court originally granted summary judgment
15 for the plaintiffs, and in that case the plaintiffs were
16 relying on registration statistics to prove that race was the
17 prominent motive. In the first *Cromartie* case, the Supreme
18 Court reversed and sent it back to trial, and they very
19 strongly indicated that voting patterns were more probative of
20 whether race was a predominant motive in registration
21 statistics, and that's because we have a large number of
22 unaffiliated voters, and also because everyone in this
23 courtroom knows that there's a lot of white Democrats that vote
24 Republican. So registration does not correlate with how people
25 vote. How people vote correlates with how people vote.

1 So when this was sent back down for trial, the 1st
2 District -- which I defy anyone to tell me how this is prettier
3 than the 2011 1st District -- this was found to be
4 constitutional and survived the *Shaw* compelling governmental
5 interest test. The Court found that it was compact. The Court
6 found there was racially polarized voting even though it was a
7 majority -- a minority-black voting-age population district. I
8 think there was only 46 percent single-race black voting-age
9 population in the 1st District under this plan.

10 The district court found the 12th District to be
11 illegal, again, based upon expert testimony involving
12 registration statistics. So it went up to the Supreme Court
13 again, and the Supreme Court found that registration statistics
14 do not correlate with the way people vote and that you can't
15 use registration statistics to prove a racial gerrymander. And
16 amazingly, that's exactly what Dr. Ansolabehere -- and I
17 apologize if I have not pronounced his name correctly. The
18 main point of his testimony is to use registration statistics
19 to prove that Congressional District 12 is an illegal racial
20 gerrymander after we've had two Supreme Court decisions saying
21 that's not a proper way to prove that case.

22 Your Honor, Tab 8 -- or excuse me -- Tab 4 was a plan
23 the General Assembly enacted after they lost in the district
24 court in the first *Cromartie* case. This plan was only used in
25 the 1998 election. It had a much lower black voting-age

1 population, but I think it was still well above 30 percent. If
2 we look at the evidence, we'll see that Congressman Watt, I
3 believe, had his closest election in '98 of all the elections
4 he's had when he was representing this district. When the
5 state won the *Cromartie* case, they reverted back to the '97
6 plan for Congressional District 12.

7 The next tab, five, is the Congressional Zero
8 Deviation Plan. This is the 2001 plan. Again, Your Honor, you
9 look at the 1st District. I would like to have someone tell me
10 how that passes the interocular test but the 2011 District
11 doesn't. And what's important to note, Your Honor, is that
12 nobody has ever argued until this case that racially polarized
13 voting does not exist where the First Congressional District
14 has been drawn.

15 In 2001, the state in its preclearance submission
16 admitted that they were drawing the 1st District as a Section 2
17 district as they had done from the beginning of this district.
18 There had never been a black congressional representative in
19 North Carolina until the 1st District and 12th District were
20 enacted.

21 Also, Your Honor, what this case is really about is
22 the *Strickland* case as far as it relates to Congressional
23 District 1. They -- on their charts here, Your Honor, they
24 haven't reported the actual black voting-age population for
25 CD 1 under the 2010 Census. If you look at the any party black

1 voting-age population for CD 1 under the 2010 Census, if you
2 look at the 2001 version, it's about 48.65 percent.

3 So the General Assembly was looking at the *Strickland*
4 case. There's no -- there is no dispute in the legislative
5 record that significant -- legally significant racially
6 polarized voting exists in this part of North Carolina. One
7 thing these map notebooks will show you, Your Honor, is that
8 all of the proposed legislative maps produced majority-black or
9 coalition districts in the very area where Congressional
10 District 1 was drawn. That was before the General Assembly.

11 They had two racial polarization experts who studied
12 racial polarization in these counties. A three-judge court in
13 *Dickson* looked at each one of these districts on an individual
14 basis to make it's findings, and so the whole issue is did the
15 General Assembly violate the law because they drew a district
16 slightly above 50 percent instead of the 48.65 percent district
17 that existed under the 2010 Census?

18 Now, counsel for the plaintiffs refers to the *Alabama*
19 case, and I want to say something about that briefly. The
20 *Alabama* case was a Section 5 case. *Alabama* drew their
21 districts that there was a legislative Section 5 case. The
22 district that was scrutinized by the Supreme Court had been
23 drawn to be over 70 percent black, and the state justified that
24 by saying, well, we decided that we had to keep districts at
25 this level because that's what they were previously.

1 Now, there's no Supreme Court case that says that,
2 and the 70 percent district, Your Honor, I would say is quite a
3 bit different than the 52 or 53 percent district which we're
4 talking about here in Congressional District 1, and the state
5 didn't adopt a mechanical rule that they came up with. *Alabama*
6 came up with a mechanical rule that they made up with no
7 Supreme Court basis.

8 North Carolina followed a rule that had been adopted
9 not only by the United States Supreme Court but also by the
10 North Carolina Supreme Court that if you're going to draw a VRA
11 district, it had to be over 50 percent because one of the
12 *Gingles* elements is there's no racially polarized voting unless
13 the blacks need a majority to defeat the white minority voters
14 who are voting in a bloc.

15 And so what's interesting is plaintiffs get up here
16 and say there's no racially polarized voting because whites are
17 crossing over in a crossover district, which it wasn't, to vote
18 for the black candidate. Well, if that's true, Your Honor,
19 then why did the plans proposed by the Legislative Black Caucus
20 and the NAACP and the Democratic leadership -- they all
21 produced plans that were 47 to 48 percent black voting-age
22 population. If there's no racially polarized voting anymore,
23 then we don't need this district at all. It can go away. We
24 can draw the district that -- 10 percent black population if
25 there's no racially polarized voting.

1 That's not what the plaintiffs wanted. They want the
2 Court to think that *Strickland* didn't happen, and they want to
3 shave the black population out of these majority-black
4 districts to create a better plan for Democrats because black
5 voters are highly correlated with voting for Democratic
6 candidates.

7 I also want to point out, Your Honor, that Tab 5 is
8 the Congressional Zero Deviation Plan with the 2000 Census. If
9 you flip through there, you'll see that the reports from the
10 General Assembly did not report the any part black voting-age
11 population. That would be on about page 3. It was the
12 single-race black population that was reported.

13 And if you go to Tab 6, Your Honor, that's the 2001
14 Congressional Plan with the 2010 Census. And if you look at
15 all the cases and the guidance from the Justice Department,
16 what the General Assembly was obligated to do was to compare
17 the benchmark plan using the 2010 Census, not the 2000 Census.

18 Oh, by the way, I do want to point out that we've
19 heard about the percentage of the vote that Congressman
20 Butterfield received, but what the plaintiffs don't want to
21 talk about is what's the actual margin of victory? So this
22 district was underpopulated by 97,500 people. Congressman
23 Butterfield had several elections where he won by less than
24 that amount. And so the question is what type of white voters
25 do you have to put back into the district to keep it at

1 98 percent? And that's exactly what the Supreme Court said the
2 states were not obligated to do under *Strickland*, that
3 legislatures and courts needed a judicially manageable
4 standard.

5 So, again, North Carolina didn't make up a mechanical
6 rule like *Alabama* did. They followed the US Supreme Court; and
7 while not binding on you, Your Honors, it is binding on the
8 General Assembly. The North Carolina Supreme Court said the
9 same thing.

10 The rest of these maps, Your Honor, are proposed
11 maps. There were only two proposed maps from other parties,
12 the Southern Coalition for Social Justice which represented a
13 coalition including the NAACP. That's under Tab 7. You can
14 see their 1st District there in yellow. Someone tell me how
15 that passes the interocular test while the enacted plan
16 doesn't, and they drew that district, I think, with a black
17 voting-age population of 47 to 48 percent. Again if, there's
18 no racial polarized voting, why isn't it at 25 or 28 percent?

19 They also drew that district, Your Honor, with -- so
20 that whites were in the minority. Nobody's ever proposed a 1st
21 Congressional District with a majority-white population. And
22 they also proposed a district with very -- nearly a majority of
23 the vote -- registered voters being black.

24 There are several versions of the *Dickson v. Rucho*
25 plan in this notebook, Your Honor. The plan was originally --

1 the 1st District was originally drawn into Wake County because
2 the cochair, Senator Rucho, and Representative Lewis may have
3 misunderstood Congressman Butterfield. For him, I have great
4 respect. But they thought that he had requested that the
5 district be drawn into Wake instead of Durham acknowledging
6 that the severe underpopulation of the 1st District could
7 require something like that, putting it into the RTP area to
8 make up the severe underpopulation.

9 The ultimate plan enacted by the General Assembly
10 took the district into Durham instead of Wake County. There
11 was historical precedent for that because the very first map we
12 looked at, the '91 Plan, which was precleared by the Justice
13 Department, had drawn the district into Durham. In fact, if
14 you look at the *Shaw II* case, the Supreme Court kind of
15 acknowledges that that district was a proper remedial district.
16 So there was historical precedent for that. There was also a
17 speaker at a public hearing who supported leaving the district
18 into Durham.

19 But again, Your Honor, what these maps show is that
20 it would be real hard to put these maps on a reality TV show
21 and have some judges decide which one of these maps is prettier
22 and then explain why, or why the 1st District is not pretty
23 enough. In fact, Your Honor, the 2001 First Congressional
24 District is more compact under -- or is only slightly less
25 compact than the 1997 1st Congressional District which the

1 three-judge court found to be compact. It's very, very close.

2 Just talking briefly about the 12th District, Your
3 Honor. That district survived the *Cromartie* litigation because
4 the state had drawn that using something called a vote
5 Tabulation District. A vote tabulation district is a piece of
6 census geography which the Census uses to do all sorts of
7 things. In North Carolina, vote tabulation districts are
8 pretty much identical to precincts with some few exceptions,
9 and precincts, of course -- the Court is familiar with what
10 precincts are. That's where people go to vote on election day.

11 The state in '97 and 2001 drew the 12th District to
12 be a strong Democratic district. The software that is
13 available to do that, you can look at the election results on
14 VTD level with no racial data being present. Dr. Ansolabehere
15 admits this in his deposition, that if you looked at election
16 results, you can't tell what the race of the voters are, and
17 that's exactly why the General Assembly in '97 to 2001 and in
18 2011 drew the 12th District based upon whole VTDs looking at
19 election results because they could not tell the race of the
20 voters.

21 The difference, Your Honor, is that the 2011 General
22 Assembly drew the 12th District to help Republicans in
23 adjoining districts. Dr. Ansolabehere has not looked at that.
24 He admits he hasn't looked at how the adjoining districts were
25 affected by the way CD 12 was drawn. And if you go back and

1 you check the *Cromartie II* case, that's fatal to his testimony
2 along with his somewhat inexplorable decision to rely on
3 registration statistics.

4 But even if they had proven -- if they could prove,
5 which they can't, that race was the predominant motive for
6 Congressional District 12, because -- and I'm quoting, I think,
7 Justice Souter if I'm right. It might be Breyer, but whoever
8 wrote the majority opinion in *Cromartie* -- because there's such
9 a high correlation between African-Americans and voting for
10 Democrats that sits over 90 percent. So if you're going to
11 make a more Democratic district, there has got to be more
12 African-Americans in it, particularly in that part of the state
13 where there's a high concentration of African-Americans.

14 And the Supreme Court in *Cromartie* said where there's
15 a high correlation between African-Americans and the party --
16 the candidate for who they vote for, even if you prove some
17 sort of indication that race was the predominant motive, the
18 plaintiffs have to offer a map showing how they could draw that
19 district in a way where race was not the predominant motive but
20 also achieving the political goals of the General Assembly.

21 There's a few other things that counsel said that I
22 disagreed with, Your Honor, but I've taken up enough time. At
23 the end of the day, Your Honor, this is just a fight over a
24 policy decision.

25 In 2001, Senator Miller drafted the 13th district in

1 a way that's just as strange looking as the 12th District
2 running from Wake County to Greensboro. He actually split up
3 part of Congressman Watt's 12th District in doing that. They
4 put Mecklenburg County into the 8th District to create a
5 district in which a Democrat could defeat Robin Hayes, which
6 happened. Those are all decisions under the cases that were
7 within the discretion of the General Assembly; and just the
8 same as those decisions were not illegal under any theory, what
9 the General Assembly in 2011 did also is lawful and is within
10 the discretion of the state's elected representatives. Thank
11 you very much.

12 JUDGE OSTEN: All right. Are the plaintiffs ready
13 to call their first witness?

14 MR. SPEAS: Yes, Your Honor. But before we call our
15 first witness -- Eddy Speas for the plaintiffs -- we would like
16 to move the introduction of our Trial Exhibits 1 through 144
17 previously identified in this matter. It is my understanding
18 that with one exception, all of these documents came from the
19 *Dickson* record, which is the subject of the stipulation that
20 the Court mentioned on Friday. With exception of one document,
21 I believe, there is no objection to the admissibility of the
22 documents. So we would at this point move the introduction of
23 Plaintiff's Exhibits 1 through 144.

24 Your Honors, I regret to tell you they're over there
25 in boxes. It's a pile. To make this case manageable for all

1 of us, as we call witnesses, we will give them a witness
2 notebook and share it with you and the clerks that will focus
3 on the particular exhibits that are important for those
4 witnesses. But the immediate matter on the table is we move to
5 introduce Exhibits 1 through 144.

6 JUDGE OSTEN: And all those documents, except one,
7 were taken care of in that stipulation filed -- like Document
8 69 or something like that?

9 MR. SPEAS: Document 70, and we would withdraw that
10 one.

11 JUDGE OSTEN: Okay, and use this one?

12 MR. SPEAS: Yes.

13 MR. FARR: I'm just questioning Mr. Speas. I think
14 Document 70 is the attorney-client privilege --

15 MR. SPEAS: Thirteen is the document that's got your
16 name on it.

17 MR. FARR: Okay. We have an attorney-client
18 privilege objection to Exhibit 13 then, Your Honor.

19 JUDGE OSTEN: So plaintiff -- so no objection to 1
20 through 12 and 14 through 144?

21 MR. FARR: If -- and Mr. Speas, I'm sure, has given
22 me the right number. If it's Exhibit -- what did you say, 13?

23 MR. SPEAS: To clarify, we will withdraw our
24 Exhibit 70 which was not in the record in *Rucho*. The only
25 exhibit to which there is an objection is Exhibit 13, which is

1 an email in which Mr. Farr is copied. To the extent there was
2 a privilege, we think it's been waived, so we would -- and it
3 is a part of the *Dickson* record.

4 JUDGE OSTEEEN: All right. So to clarify then,
5 Mr. Farr, no objection to 1 through 12, 14 through 69, and 71
6 through 144?

7 MR. FARR: Your Honor, there's one other -- there's
8 like an expert report from a group that we objected to on the
9 grounds of hearsay -- oh, okay. Yes. So the only objection we
10 have is to Exhibit 13. And, Your Honor, when you look at it, I
11 wasn't just copied, I was giving legal advice to people who
12 were working for the legislature.

13 JUDGE OSTEEEN: All right. Seventy is withdrawn. So
14 I'm going to -- 1 through -- now, I've got my numbers mixed up.
15 So 1 through 12, 14 through 69, 71 through 144 are admitted
16 without objection. There is a pending objection as to
17 Plaintiff's Exhibit 13. Unless there's a better procedure, to
18 keep us moving this morning, at present I'm going to admit it
19 subject to the objection, and we'll rule on the objection when
20 we have a few minutes.

21 MR. FARR: I was going to suggest something like
22 that, Your Honor. I was thinking if the Court would look at
23 that at some point in time and just tell us what you think,
24 that would be fine. You don't need to do it right at this
25 moment.

1 JUDGE OSTEN: All right. Let me get my numbers
2 right for my notes. 1 through 12 -- Plaintiff's Exhibits 1
3 through 12 are admitted. 14 through 69 are admitted.
4 Plaintiff's Exhibits 71 through 144 are admitted. Plaintiff's
5 Exhibit 13 is admitted pending a final determination of the
6 attorney-client privilege objection. Where are -- is that the
7 boxes over there?

8 MR. SPEAS: Yes, Your Honor. There's a box for each
9 of the judges and each of your clerks. But as I said, as a
10 witness is called, we will hand the witnesses notebooks that
11 contain those exhibits so that it will be manageable for
12 everyone hopefully.

13 JUDGE OSTEN: All right. Move forward then.

14 MR. SPEAS: Your Honors, thank you. We would then
15 call as our first witness Senator Dan Blue. And as Senator
16 Blue comes around, Your Honors, if I may approach the bench?

17 JUDGE OSTEN: Yes. Mr. Farr, will it be easier for
18 us to give you these back -- hold on just a second -- the
19 exhibits you've handed us now and let you hand them up again
20 when you're ready to introduce them, or just keep them up here?

21 MR. FARR: Whatever the Court prefers. You might
22 like to refer to them as the testimony is going forward.

23 MR. SPEAS: I have no objection to you keeping them.

24 JUDGE OSTEN: Okay. All right.

25 (Witness sworn by the clerk.)

1 MR. SPEAS: Your Honor, if I may approach the witness
2 and hand him the exhibits.

3 THE COURT: You may.

4 MR. SPEAS: Your Honor, in addition to using the
5 notebook, to the extent my technological skills permit this to
6 happen, I am hoping to put up on the screens the pertinent
7 parts of their testimony so that we will all be talking about
8 the same thing.

9 THE COURT: All right.

10 DANIEL BLUE,

11 PLAINTIFF'S WITNESS SWORN AT 10:04 a.m.

12 DIRECT EXAMINATION

13 BY MR. SPEAS:

14 Q Would you stated your name for the record, please?

15 A Yes. Good morning, Your Honors. My name is Daniel Blue,
16 Jr.

17 Q And would you tell the Court a little bit about where you
18 grew up and where you went to school.

19 A I grew up in Robeson County on a farm in Lumberton. After
20 graduating from the public schools in Robeson County, I
21 enrolled at North Carolina Central University and got a degree
22 in mathematics and from there I went to Duke Law School and
23 graduated from Duke Law School with a JD in 1973.

24 Q Have you been engaged in the practice of law since then?

25 A I have, since August 1973 when I got word that I passed

1 the bar exam.

2 Q And tell the Court just a little bit about your law
3 practice over those years.

4 A Out of law school, I was recruited to one of the bigger
5 firms in Raleigh. It was Sanford, Cannon, Adams and
6 McCullough, a firm founded by and headed by former Governor
7 Terry Sanford, and I practiced there for a while and then left.

8 I along with two other associates of my earlier
9 associates established a law firm in Raleigh, Thigpen, Blue &
10 Stephens, and since that time I have practiced with that firm
11 in one iteration or the other, but it's now Blue, Stephens &
12 Fellers in Raleigh, and so for the last 42 -- 42 plus years,
13 we've consecutively practiced general litigation but also
14 specializing in some subareas.

15 Q Did your work with former Governor Sanford inspire you to
16 get involved in political life yourself?

17 A It did. Growing up, it's not popular now, but I was
18 nailing signs up on light posts and trees when Sanford was
19 running for governor in 1960. I was a little boy. I was 10
20 years old, 11, and so when we joined the firm, one of the
21 requirements that Sanford had -- who at that time had become
22 president at Duke but was still involved in the firm, is that
23 everybody had to do something politically oriented, whether it
24 was work in your precincts or run for office or do various
25 things. Multiple people in the firm ran and served in various

1 public offices around Wake County and around the state.

2 Q And you yourself have served in public office, I believe?

3 A I was elected to the North Carolina House of
4 representatives in 1980, and I served continuously in that body
5 until 2001 when a slight fit of insanity hit me and I ran for
6 the United States Senate. I stayed out of the legislature from
7 2003 and went back in 2006 back to the House and went over to
8 the Senate in 2009.

9 Q And during your many years, I guess more than 30 years now
10 in the legislature, were you involved in various redistricting
11 decisions by the North Carolina General Assembly as a member of
12 the General Assembly?

13 A I have been since 1980, in November when I was certified
14 as a member of the House. I've somewhat been involved. In the
15 1981 session of the General Assembly, I was involved both in
16 Congressional Redistricting Committees and the House
17 Redistricting Committee, and was involved in the districts that
18 led to *Gingles*.

19 I was first elected county wide in Wake County and
20 ran county wide on several occasions. In '84 as a result of
21 *Gingles*, *Gingles* versus -- became *Gingles* versus *Thornburg*, but
22 as a result of that case, a single member district, a system of
23 single member districts were created in Wake County, and what
24 had been a six member at large district became six single
25 member districts, so I represented those.

1 In 1990, I was involved pretty intimately in the
2 redistricting process. I was elected Speaker of the House of
3 the session that began in 1991, so not only was I involved, I
4 appointed the redistricting committees, both the House
5 Redistricting and the Congressional Redistricting Committees
6 and was involved in many of the discussions regarding the 1991
7 Congressional Redistricting effort, and so I did that.

8 And then in 2000 I was still in the House, and I was
9 involved in the redistricting discussions, both at the
10 Congressional level as well as in the House redistricting, and
11 I was not involved in the redistricting committee. I was not
12 appointed to the Senate Redistricting Committee in 2011,
13 although I tried hard to be and had a guy who was a senator who
14 was going to resign so that I could serve there, but it was a
15 choice of the president pro tem of the Senate not to appoint me
16 to redistricting, but I was still involved in following the
17 hearings and listening to testimony and talking to people all
18 across the state regarding the redistricting effort.

19 Q Okay. Now, were you involved in the redrawing of
20 Congressional District 1 and Congressional District 12 in 1997
21 following the 1996 decision of the US Supreme Court in *Shaw v*
22 *Hunt*?

23 A I was.

24 Q Okay. And Senator Blue, I would ask you to turn to the
25 tab behind your testimony marked 73, which is Plaintiff's

1 Exhibit 73, and if our paralegal could put that up on the
2 screen. Is it there? Yes. Thank you.

3 Senator, is this the Section 5 submission made to the
4 US Department of Justice by the North Carolina General Assembly
5 in 1997 sending forth for preclearance the rewrite of those
6 Congressional 1 and Congressional 12 following the *Shaw*
7 decision?

8 A Yes, that's what it purports to be, and that's what it is,
9 typical cover letter sent with submissions.

10 Q And would you turn to pages 10 -- I'm sorry, nine and 10
11 of that document, and there's a section there entitled, "Effect
12 of Change on Minority Voters," is that correct?

13 A That's correct.

14 Q And is it fair to say -- I don't want you to get into read
15 it or anything like that. Is it fair to say in that section,
16 the North Carolina General Assembly explained to the US
17 Department of Justice the criteria that it was following and
18 the factors that it was considering in establishing those
19 districts?

20 A That is a correct characterization of it, and that is
21 consistent with typical explanations that had been given; but,
22 yes, it clearly says what the criteria is and what the factors
23 are that are being considered.

24 Q And would you actually read for us the first two sentences
25 of that section?

1 A "The General Assembly's primary goal in redrawing the plan
2 was to remedy the constitutional defects in the former plan.
3 Those defects were the predominance of race in the location and
4 shape of Districts 12, and perhaps in the location and shape of
5 District 1, and a failure of narrow tailoring."

6 Q And would you look with me to page 10 of that document,
7 the 6th line from the top, I believe, and is it accurate that
8 the legislature applying the criteria it described there and
9 weighing the factors it described there, set the voting --
10 black voting-age population for Congressional 1 in 1997 at
11 46.54 percent?

12 A That's -- that states it correctly, yes.

13 Q Okay. Now, was the '97 legislation precleared by the US
14 Department of Justice?

15 A Yes, it was.

16 Q Was any suit filed challenging that legislation under
17 Section 2 of the Voting Rights Act?

18 A There was no suit under Section 2 of the Voting Rights
19 Act. Yeah, as I recall correctly, there was not.

20 Q And that brings us to the 2001 redistricting. You were in
21 the legislature?

22 A I was.

23 Q And is it fair to say that the Congressional 1 and
24 Congressional 12 in the 2001 plan looked a fair amount like the
25 '97 versions?

1 A They did. They did.

2 Q And were those versions precleared by the US Department of
3 Justice?

4 A They were.

5 Q And was any suit filed during that decade challenging any
6 of those districts on Section 2 grounds?

7 A There was no suit filed against them on Section 2 basis;
8 and, in fact, Mr. Speas had the honor, I call it that, but when
9 I was Speaker, the challenges on the basis of Section 2 were --
10 basically it was the Justice Department objecting because we
11 were refusing to create a second Congressional District that
12 was race based.

13 Following the redistricting, it was pretty much
14 concluded that polarization and all of those issues existed in
15 the northeast and the east primarily, and you could draw a
16 district that was contiguous and somewhat compact, but with
17 respect to a second minority Congressional District, we made
18 the call, primarily with my urging, not to create a second
19 Congressional District and the United States Department of
20 Justice corrected us on that and made us go back and do it.

21 Q That was in '91?

22 A That was in '91.

23 Q Not 2000?

24 A Yeah, that's what I was saying all of that to say that
25 subsequent to that, I think that may have been the last

1 Section 2 challenge that was started out as Section 5. May
2 have been the last Section 2 challenge, other than leading up
3 to the earlier -- the '97 remapping.

4 Q I apologize for my confusing question. My question is
5 addressed to the 2001 plan. Was it precleared?

6 A It was precleared, and there was no lawsuit brought in
7 connection with it.

8 Q Now, that brings us to 2011. You were in the legislature?

9 A Yes, sir.

10 Q And you were not on the Redistricting Team Committee, but
11 is it fair to say you have an avid interest in redistricting?

12 A I do.

13 Q Would you provide the Court with an overview of this 2011
14 redistricting process as you saw it as a member of the Senate.

15 A As a sitting member of the Senate, again, there was -- I
16 think maybe it was in June or July sort of that there was this
17 discussion after the census data had been received where
18 Senator Rucho, who was the Senate chairman of both Senate
19 Redistricting and Congressional Redistricting, along with
20 Representative Lewis who was his counterpart in the House sort
21 of sprung them out, and said these are the things that we're
22 looking for in redistricting, and we're going to have public
23 hearings to see what the public reaction is to what they're
24 trying to do. That's sort of the background of how we started
25 talking about redistricting.

1 Q So it's accurate that first plans are presented by the
2 defendants here some time in mid-June and then they're enacted
3 by the end of July; is that --

4 A Yes, that's accurate.

5 Q And that's Congressional and State House and State Senate?

6 A That's right.

7 Q So it was a pretty quick process?

8 A It was a quick process, and there was -- for all intents
9 and purposes there was no real external input other than
10 they're presenting the map, and any tweaking or changes they
11 did among themselves. I mean, the -- there were no changes
12 that were adopted that may have come from anybody externally in
13 the sense of legislators not on the committee.

14 Q And what role did Senator Rucho and Representative Lewis
15 play in this process?

16 A Senator Rucho was the Senate Chair of Congressional as
17 well as Senate Redistricting. Representative Lewis was the
18 House Chair of House Redistricting and Joint Chair of the
19 Congressional Redistricting, and for the most part, the two of
20 them drew the maps -- not necessarily drew them, but supervised
21 the drawing of the maps, which were done external of the
22 General Assembly.

23 Q And do you know who actually drew the maps?

24 A Mr. Tom Hofeller.

25 Q Okay.

1 A I've learned since then drew the maps, and that's what we
2 learned during the course of the enactment of the plans.

3 Q Did Mr. Hofeller ever appear in the legislature and
4 explain how he drew the plans?

5 A No, sir.

6 Q Okay. Now, I think the historical record establishes that
7 Senator Rucho and Representative Lewis communicated their
8 criteria for developing these plans in a series of public
9 statements, is that correct?

10 A Yes, they on several occasions, both written and I think
11 in press conference form, indicated what they were looking for
12 and what they were looking at in trying to arrive at the
13 redistricting plans.

14 Q And did they explain in these statements and in other
15 places their understanding of their obligations under the
16 Voting Rights Act?

17 A Well, the thing that stood out is that they explained that
18 their obligation was to create voting rights districts, Voting
19 Rights Act districts pretty much throughout the state, both
20 legislatively and congressionally and that the criteria that
21 they had to adhere to was the 50 percent plus voting-age
22 population in each of the districts because that's what they
23 read *Strickland* to mean.

24 Q And, Senator, if you would turn to the tab in -- after
25 your notebook that's labeled five, it's in front of -- actually

1 Defendant's Exhibit 55 is a very nice collection of all the
2 public statements. Is the first public statement issued in
3 June, on June 17, 2001 --

4 A It is.

5 Q -- 2011?

6 A It is June 17, 2011, issued from them.

7 Q And could we put page 2 of that up on the screen?

8 THE COURT: Let me ask a question. So in the
9 notebook, the tab five is Plaintiff's Exhibit 5?

10 MR. SPEAS: I'm sorry, Your Honor, it got mislabeled.
11 It's Defendant's Exhibit 55 which we listed as, you know, we --
12 in our --

13 THE COURT: So the defendant/plaintiff labels may not
14 mean anything as we go along?

15 MR. SPEAS: Not in this particular instance. I'm
16 sorry for the confusion.

17 THE COURT: So it's Defendant's Exhibit -- I have on
18 the first page a deposition Exhibit 55, and then down at the
19 bottom I have a copy of a Defendant's Exhibit something. How
20 do these numbers --

21 MR. SPEAS: I thought it was 55. Maybe I'm confused.

22 MR. FARR: Your Honor, Defendant's 55 is some
23 testimony from a person in a public hearing, and our version of
24 what Mr. Speas was referring to is I think it's Defendant's --

25 THE COURT: So the sticker at the bottom that says

1 Defendant's Exhibit D-5.11 is the number for the record?

2 MR. FARR: Yeah, Your Honor. I think the defendant's
3 sticker for this case on the screen is in blue at the bottom.
4 The exhibit number at the top was the exhibit number in the
5 *Dickson* case. I think that clears it up.

6 THE COURT: Okay. So make sure, as you go along, do
7 the best you can to get me the right numbers.

8 MR. SPEAS: I apologize, Your Honor. It's
9 Defendant's Exhibit D-5.11.

10 THE COURT: Okay.

11 BY MR. SPEAS:

12 Q Senator Blue, now that I've not confused it too terribly I
13 hope, would you look on the second page of this exhibit which
14 is one of the public statements and read into the record the
15 second paragraph, beginning paragraph, the first two sentences
16 beginning, "In creating."

17 A Yes, sir. "In creating new majority African-American
18 districts, we are obliged to follow the decisions in *Stephenson*
19 1 and 2 as well as the decision by the North Carolina Supreme
20 Court and the United States Supreme Court in *Strickland versus*
21 *Bartlett*, with a cite. Under the *Strickland* decisions,
22 districts created to comply with Section 2 of the Voting Rights
23 Act must be created with a black voting-age population, BVAP,
24 as reported by the census at the level of at least 50 percent
25 plus one."

1 Q Okay. And would you look -- that was from the June 17
2 public statement?

3 A Yes, that was from the joint statement by Senator Rucho
4 and Representative Lewis dated or released June 17, 2011.

5 Q And I'm going to ask our paralegal to put up on the screen
6 the public statement dated July 12, particularly page 4. Do
7 you have the July 12 statement?

8 A Is that -- do you mean on page 4 of this document? Yes,
9 I'm looking at page 4 of the document.

10 Q Okay.

11 THE COURT: While we're stopped. We had an air
12 conditioning problem of all things this morning. The chillers
13 went down and GSA was slow. So to get us restarted, I
14 understand the problem has supposedly been taken care of, but
15 it's going to take a little while for the cooling to fix this
16 courtroom, and I apologize for that.

17 BY MR. SPEAS:

18 Q Senator Blue, could you look over at the screen. That's
19 the particular part of the July 12 statement I'm interested in.
20 Could you read that into the record, please.

21 A Sure. First, we have complied, as we must, with the
22 holding by the United States Supreme Court and the North
23 Carolina Supreme Court in *Strickland versus Bartlett*, with a
24 cite. These decisions require that districts drawn to insulate
25 the state from liability under the Voting Rights Act must be

1 drawn with a black voting-age population in excess of
2 50 percent plus one.

3 THE COURT: Let me make sure I understand where that
4 comes from. Where is --

5 MR. SPEAS: It comes from the July 12 public
6 statement which is a part of Defendant's Exhibit D-5.11.

7 THE COURT: Oh, that's page 2.

8 MR. SPEAS: I apologize for the confusion, 5.11. I
9 apologize for the confusion. This exhibit contains all the
10 public statements issued.

11 THE COURT: All right.

12 BY MR. SPEAS:

13 Q Now, were you in debates in the legislature where these
14 same statements were made by Senator Rucho?

15 A Was I in the legislature?

16 Q Yes.

17 A Sure.

18 Q And you heard these statements on the floor of the Senate?

19 A Well, this statement was from a July statement that he
20 made, but I've heard him make, yes, the statement because this
21 wasn't the only time. He said that multiple times.

22 Q Okay. Now, let me now ask you, Senator Blue, if you would
23 look at the July 1 public statement which is a part of
24 Defendant's Exhibit D-5.11 at page 3.

25 A I have that.

1 Q Did you -- do you have that in front of you?

2 A I have page 3, yes.

3 Q Okay. And if you would look at page 3 of that statement,
4 would you -- could we put this up on the screen, please.

5 Senator Blue, if you would look at the screen. Is that up?

6 I'm sorry, Your Honor, I'm having a hard time seeing. Your
7 Honor, I've managed to completely confuse myself. Let's just
8 skip by that for the moment.

9 Let's look, Senator, at exhibit -- Plaintiff's
10 Exhibit 139 which is in front of you under tab 139.

11 A Got it.

12 Q Is that a transcript of the July 25, 2011 session of the
13 North Carolina General Assembly?

14 A It is.

15 Q And would you look at pages 8 and 9, particularly at the
16 bottom of page 8, at line 19, the paragraph beginning
17 "however."

18 A I got it.

19 Q Okay. Would you read that into the record, please.

20 A It says, "However, we must alter the 2001 version of the
21 first district because of two flaws. First, the current first
22 district is underpopulated by over 97,000 people. Secondly, it
23 does not include a majority-black age voting - black voting-age
24 population, better known as BVAP, as required by Section 2 of
25 the Voting Rights Act, see *Strickland* and *Bartlett* -- *Bartlett*

1 excuse me. Thus any revision of the first district requires
2 the addition of over 97,000 people. Also, the added population
3 must include a sufficient number of African-Americans so that
4 the first district can re-establish as a majority-black
5 district.

6 Prior to our release of the Rucho/Lewis 1, we
7 discussed both of these problems with Congressman Butterfield.
8 We believe that he understood and agreed that his district
9 would be drawn in either Wake or Durham County to cure the
10 district's equal population and voting rights deficiencies. We
11 understood that Congressman Butterfield preferred that his
12 district be drawn in Wake instead of Durham. We also discussed
13 with Congressman Butterfield that drawing his district in Wake
14 County may result in the withdrawal from his district of one or
15 more counties covered by Section 5 of the Voting Rights Act."

16 Q Okay. Thank you. And when the General Assembly enacted
17 the Congressional Plan in July, did Congressional District 1
18 contain more than 50 percent voting-age -- black voting-age
19 population?

20 A The plan finally enacted did.

21 Q Okay. And let me go back just a moment to your district.
22 You were in Senate District 14, I believe?

23 A I am in Senate District 14, yes.

24 Q And tell the Court what Senate District 14 was like in
25 2010 in terms of shape and in terms of voting -- black

1 voting-age population.

2 MR. STRACH: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. STRACH: It appears that the line of questioning
5 is going into legislative districts. This matter seems to be
6 focused on Congressional Districts, so we'd simply note
7 objection, Your Honor, to testimony from Senator Blue regarding
8 Legislative Senate District 14.

9 THE COURT: Relevance of the statement?

10 MR. SPEAS: It illustrates the application of the
11 50 percent plus one rule.

12 THE COURT: Just a second. Is it for illustrative
13 purposes only, in your opinion?

14 MR. SPEAS: Yes.

15 THE COURT: Yes, sir?

16 MR. STRACH: We wouldn't have any objection to it for
17 illustrative purposes.

18 THE COURT: No objection?

19 MR. STRACH: For illustrative purposes.

20 THE COURT: For illustrative -- hold on just a
21 second.

22 (Discussion among judges.)

23 THE COURT: We'll allow it for illustrative purposes.

24 MR. SPEAS: Thank you, Your Honors.

25 BY MR. SPEAS:

1 Q Senator Blue, briefly, tell the Court what your district
2 was like in 2010 before it was redrawn in terms of shape and
3 population.

4 A Yeah, my district, as the other districts that later
5 became the majority minority districts was well under
6 50 percent black, not only voting-age population but black
7 population, and the idea that Senator Rucho expressed in the
8 press release that you saw earlier as well as in his statement
9 on the floor was that any district drawn to satisfy the
10 requirements as he perceived of Section 2 of the Voting Rights
11 Act had to be more than 50 percent plus voting -- black
12 voting-age population.

13 So my district was somewhere down in the low 40s, 40,
14 41, 42 at most and had consistently been that level. It had 70
15 or 80,000 people too many in it, and by the time we did 2010
16 census; but, anyhow, my district is illustrative of what
17 happened to the other districts that had black senators in that
18 it was taken from roughly 40, 42 percent black population,
19 black voting-age population, to in excess of 50 percent, and
20 that was the same -- same thoughts that he had expressed about
21 the Congressional Districts, that even though they were below
22 50 percent, that he was going to take them above 50 percent
23 black voting-age population.

24 Q And at some point in the legislative process, you posed to
25 Senator Rucho the question, what is it about the Voting Rights

1 Act that requires you to increase the black voting-age
2 population in districts that are less than 50 percent that are
3 already electing African-American candidates?

4 A He said it was his understanding and his belief that he
5 had to take them all beyond 50 percent because *Strickland*
6 informed him that that's what he's supposed to do.

7 Q Now, let me ask you, Senator, to do this for me. We've
8 talked about the 2001 plan that was precleared by US Justice,
9 or plans that were precleared, and we talked about the 2011
10 plan. The 2001 plan had how many majority African-American
11 voting-age population districts, the 2001 plan?

12 A I believe the 2001 plan had nine.

13 Q No, I'm sorry. Congressional Districts?

14 A Congressional District. The 2001 plan had two districts
15 that had black Congress people representing them. Neither of
16 those districts was over 50 percent black voting-age
17 population.

18 Q And the enacted plan had how many districts over
19 50 percent?

20 A In 2001? Oh, in 2011.

21 Q Yes.

22 A The 2011 plan took both districts in excess of 50 percent
23 or at least attempted to take both districts in excess of 50
24 percent black voting-age population.

25 Q And how many districts, Senate districts, in the 2001 plan

1 had a majority-black African-American voting-age population?

2 A Nine Senate districts.

3 Q No in 2001?

4 A 2001? 2001 had no State Senate districts. However, black
5 voting-age population in excess of 50 percent. The range ran
6 from I think the high 20s, even lower than that in a district
7 that was represented by a black Senator in Alamance County, but
8 the 2001 plan, or three plan as finally enacted, had no North
9 Carolina Senate districts that had black voting-age population
10 above 50 percent.

11 Q And the 2011 Senate plan had how many majority --

12 A It went from zero in the 2003 final plan to nine in the
13 2011 plan. So zero in 2003 had over 50 percent -- had
14 50 percent plus black voting-age population, nine following the
15 2011 redistricting had 50 percent black voting-age population.

16 Q And on the House side, in 2001, do you recall
17 approximately how many House districts had majority-black
18 voting-age populations?

19 A The House had -- it was either 10 or 11 black voting-age
20 population districts in 2001 and 2003 after the redistricting
21 effort, and the 2011 plan, the House had 23 black voting-age
22 population districts.

23 Q That --

24 A That were over 50 percent.

25 Q So let me see if I've got this right and to summarize.

1 The Senate plan went from no majority-black voting-age
2 population district in 2001 to nine in 2011?

3 A That's correct.

4 Q The House went from 10 majority African-American
5 voting-age districts in 2001 to 23 in 2011?

6 A That's accurate.

7 Q And in the Congressional side, the 2001 plan had no
8 Congressional District with a majority voting-age population
9 black; the 2011 plan had two?

10 A That's correct.

11 Q Now, did you vote on all three of these plans?

12 A I voted on all three of them, yes.

13 Q And how did you --

14 A No, no, no, I voted on two of them. I couldn't vote for
15 the House plan.

16 Q Okay.

17 A I could at the end --

18 Q How did you vote?

19 A I could at the end, but I voted -- I voted no on all of
20 them, and every other black Senator voted no on all of them,
21 all three plans. And the reason I made the comment earlier is
22 typically the Senate affirms what the House does its plans, and
23 the House affirms what the Senate does to its plan, and then
24 both fight about the Congressional Plan.

25 But in this case all of the African-American

1 senators, and there were nine at the time, nine who came from
2 these non-majority-black districts, all voted against the plan.
3 No, there may have been more than that at the time; but,
4 anyway, all of them voted against it, and all of the House
5 members voted against all three plans, the black House members.

6 Q All of the African-American members of the Senate in 2011
7 voted against the plan that was finally enacted for the Senate
8 and the plan finally enacted for Congress?

9 A Yes.

10 Q Okay. Would you take a minute and just tell the Court why
11 you opposed these plans that created all these new for the
12 first time majority African-American voting-age population
13 districts.

14 A Well, there's several reasons, but the most obvious was
15 that this was seen among those who had been elected to
16 represent all of the people in their districts, not just the
17 black citizens in their districts, it was seen as a
18 balkanization of the electorate, and basically a ghettoization
19 of the black elected officials.

20 It was creating districts where they were not needed
21 and where they were not justified to create a majority-black
22 district in Wake County, and this was part of a discussion with
23 the Congressional debate as well. A county that since the
24 passage of the Voting Rights Act shortly thereafter had
25 consistently elected minorities in county-wide positions; a

1 county which had two of the four constitutional officers, the
2 Register of Deeds and the sheriff, two of the four county
3 constitutional officers elected county wide were minority; a
4 county that had elected judges county wide and in districts
5 since following the passage of the Voting Rights Act, a county
6 that had elected African-Americans at every level of county
7 Government to the legislature, as well as other places, school
8 board, and everything else; a county that had elected three
9 African-Americans at the same time in -- from 2000 to 2010 to
10 the House of Representatives, although there was only one
11 majority minority district, and it was not over 50 percent, but
12 had elected African-Americans in districts that were under
13 20 percent African-American, a second district that was under
14 30 percent African-American, that there was no indication that
15 you needed to draw districts that were over 50 percent
16 African-Americans in order to achieve the purposes of the
17 Voting Rights Act; and, quite frankly, it was offensive to most
18 of those of us who represented the people of our districts and
19 especially those of us who were African-American.

20 It was acting as if the Voting Rights Act had
21 determined that things would go in a negative direction, that
22 you would create these districts, and they would sit there
23 forever, that they would not grow with time, that they would
24 not expand, that they would not basically do what we felt the
25 Voting Rights Act was designed to do, and that is eliminate the

1 need for race -- race use in any kind of districting or any
2 kind of plan as we basically made the promise of America apply
3 equally to everybody.

4 And this plan was seen as basically reversing all of
5 that, ignoring the last 50 years of history and acting as if
6 Wake County, which had a record that I just described to you, I
7 was elected county wide to the General Assembly, we had a
8 senator elected county wide, but that Wake County had the same
9 history or the same proclivities as some of the other counties
10 where remedial action was necessary. That was an insult not
11 only to the black citizens of Wake County, but to everybody in
12 Wake County, including the white citizens who had been told
13 that they were racist, that they voted in a polarized fashion,
14 when the record showed they did not. When the record showed
15 they voted in coalition forms, voted for candidates, and that
16 there was no need to have special privileges and special
17 districts set aside that became -- I called them, I think in my
18 floor debate, townships like existed in South Africa.

19 MR. SPEAS: Thank you, Senator Blue.

20 THE WITNESS: Yes, sir.

21 THE COURT: Cross-examination?

22 MR. STRACH: Yes, Your Honor, Phil Strach for
23 defendants.

24

25

1 CROSS-EXAMINATION

2 BY MR. STRACH:

3 Q Good morning, Senator Blue.

4 A Good morning, Phil.

5 Q Good to see you again.

6 A Same here.

7 Q Senator Blue, you just had a discussion about Wake County.
8 If the legislature had drawn a Senate district for you that was
9 in the 10 to 15 percent black voting-age population range,
10 would you have agreed to that?

11 A I probably would have, yes.

12 Q Do you believe --

13 A I got elected in a district initially that was less than
14 15 percent black voting-age population.

15 Q Do you believe that a black candidate other than yourself
16 could be elected in that district?

17 A Yes, I just indicated that county wide we elected a
18 sheriff when less than 15 percent of the county population,
19 black voting-age population -- when less than 15 percent of the
20 county's black voting-age population was African-American.

21 We elected county commissioners. We elected judges
22 county wide in districts that had less than 15 percent
23 registered black vote. The vote in Wake County now is
24 approximately 23, 24 percent African-American, reflects the
25 state population pretty much; and, again, consistently, that

1 county has elected African-Americans.

2 There is no study that I'm aware of that I have seen,
3 and I've followed this for the last 30 plus years, that shows
4 that degree of polarized voting in Wake County that would
5 justify the creation of these super majority minority
6 districts, a super saturated minority districts.

7 One of the things that, Phil, that distinguished Wake
8 County from some of the other urban counties is that most of
9 the black voting-age population and the black population did
10 not live in just one section of Raleigh, of Wake County, and so
11 part of the difficulty in drawing districts, if you determine
12 that you're going to make a certain percent black, you've got
13 to have all these strange appendages all over your maps because
14 you've got to reach into neighborhoods that are not
15 majority-black, but they've got majority-black pockets in them.
16 And so you reach all over the place getting pieces of votes
17 through neighborhoods without regard to other things that unify
18 those neighborhoods.

19 So, yeah, I would have voted for a plan that
20 naturally divided Wake County on some basis. I think it would
21 have been tough to draw a plan that did not have at least a
22 House district or a Senate district with over 25, 30 percent
23 minority population if you kept together the natural area in
24 southeast Raleigh, but that that would have been the natural
25 thing. You could have drawn a district 30 percent black

1 voting-age population I think that would have been acceptable
2 to most people.

3 Q Do you -- were you aware of alternative Legislative and
4 Congressional Plans proposed by the Legislative Black Caucus.

5 A I'm aware of two or three other groups that proposed
6 plans.

7 Q Did you have any input on the -- the alternative maps that
8 were proposed by the Legislative Black Caucus?

9 A The only influence I had was to convince people that it
10 made no sense to pack all African-Americans in as few of
11 districts as possible. I didn't have any plans on the final
12 proposal that they sent forth. In fact, I disagreed with some
13 of the districts that they proposed to create.

14 Q Were you aware that the Legislative Black Caucus proposed
15 House districts -- or at least one House district in Wake
16 County that was majority-black?

17 A Yeah, it was a continuation of old House District 33, I
18 believe; and, again, as I say, if you go into southeast Raleigh
19 which is a traditional African-American area of town, you can
20 come up with 40,000 African-Americans without having contorted
21 districts, without having strange appendages. So if you just
22 take that population, you'll end up with a district that's
23 close to 50 percent African-American.

24 But what the legislature did, for the first time they
25 created two African-American House Districts in Wake County

1 that have strange looks to them; and, again, in light of the
2 fact that Wake County had elected three African-Americans in
3 districts that were far less than the 30, 40 percent
4 African-American black voting-age population.

5 Q Now, you're talking about blacks that have been elected
6 county wide, correct?

7 A County wide and district wide, no, no, no. They were
8 elected in specific districts. There was one district in the
9 Knightdale/Raleigh area that had 29 percent black population,
10 black voting-age population, that consistently elected a black
11 woman. There was another district in northwest Raleigh that
12 elected and reelected Ty Harrell. That district was less than
13 20 percent African-American. All of that was done and occurred
14 between 2001 and 2010.

15 Q Now, the candidate in the district that you just mentioned
16 that had 29, 30 percent in the Knightdale area, who -- was that
17 Linda Coleman?

18 A Linda Coleman won reelection in that district.

19 Q How many times?

20 A She ran -- again, I was out of the House from 2003 to
21 2006. Linda was there when I got back, and she ran -- she was
22 re-elected -- I think she was re-elected two times, and then
23 she chose to join the cabinet of Governor Perdue after Governor
24 Perdue was elected in 2009.

25 Q Right. And do you know who won that district after she

1 left that district?

2 A Darren Jackson. I don't think there was a black opponent.
3 If it was, it wasn't a serious one.

4 Q But he's white, correct?

5 A Darren is white, yes.

6 Q Now, Senator Blue, you said that you were in the North
7 Carolina House from 1980, and I think you were there through
8 December 31 of 2002?

9 A That's correct.

10 Q Is that correct? So you were consistently elected from
11 either a multimember district or your single member district
12 from 1980 to -- to through 2000, is that correct?

13 A That's correct.

14 Q And so you were in the State House when the 2001
15 Congressional Plan was enacted?

16 A I was.

17 Q And you were on the redistricting committee?

18 A I was. I was.

19 Q All right. So --

20 A I was traveling pretty extensively as a said. I was
21 running for the -- in the primary for the United States Senate,
22 so I have to admit that I probably didn't put as much time in
23 the legislature as I should have, but I paid attention to
24 redistricting.

25 Q But you were on the redistricting committee, so you had a

1 direct voice in the drawing of those maps, correct?

2 A Yep, sure, as well as other members. It was an open
3 process. Not only those on the redistricting committee, but
4 members of the House had pretty free rein to say what they
5 believed, and everybody reviewed their own districts.

6 Q Do you remember how many times you ran in multimember
7 districts at the beginning?

8 A Primary and general elections?

9 Q Just -- yeah, primary and general.

10 A I ran in multimember districts in three or four primaries,
11 I think, and two general elections.

12 Q All right. And then that's after the *Gingles* litigation
13 that then went to a single member district?

14 A Yes, after *Gingles* and after '84 it became a single member
15 district.

16 Q All right.

17 A And it became a single member district not -- because the
18 proposal that had been made after *Gingles* was handed down was
19 that we create single member districts in the urban areas,
20 including those that were not necessarily affected by *Gingles*.
21 For example, in Durham County, the *Gingles* decision determined
22 that there did not have to be any majority minority district.
23 *Gingles* specifically said Durham did not have polarized voting,
24 but decision was made in the General Assembly so that these
25 districts wouldn't be isolated and stand out as different, that

1 if we were going to create single member districts in these
2 urban areas, that all of the districts in the urban areas would
3 become single member districts and we would totally dismantle
4 the multimember districts that would remain; but that, again,
5 was to make sure that these majority-black districts that were
6 deemed necessary by *Gingles* were not sort of looked at as again
7 isolated and ghettoized districts.

8 Q So in a multimember district, Senator Blue, you said that
9 Wake County was a six member multimember district, so six
10 seats -- voters could vote for six seats at one time county
11 wide, is that correct?

12 A That's correct.

13 Q And so in that situation a voter -- there might be several
14 white candidates, there might be several black candidates
15 within that pool of how ever many candidates were running,
16 correct?

17 A That's right.

18 Q So in that situation in a multimember district, voters
19 have the option of voting both for white candidates and black
20 candidates at the same time, is that correct?

21 A That's correct.

22 Q All right. And in a single member district, you have to
23 vote for one or the other?

24 A That's correct.

25 Q All right.

1 A Unless both of them are the -- you know, two blacks or two
2 white candidates.

3 Q Right. And in a multimember district, are you familiar
4 with the concept of single shop voting?

5 A Sure.

6 Q What is single-shot voting?

7 A Single-shot you can vote for one or fewer than all of the
8 available slots that you have that you could vote in.

9 Single-shot voting was a technique perfected primarily in the
10 '50's and '60's as a way to get over these districts. I don't
11 defend multimember districts, but I'm saying over time you
12 learn how to adapt and you make whatever you have work for you.

13 So single-shotting was -- single-shooting was one of
14 the techniques that was developed to elect minorities in
15 districts where minorities hadn't been elected so that you
16 didn't have to vote, say, for all six. You could vote for your
17 top three candidates, and the probability that one of them or
18 two of them or three of them would win was much greater if you
19 didn't spread your votes to the others.

20 Q All right. So that was one way in the multiple member
21 system that black voters could overcome the effects of racially
22 polarized voting, is that correct?

23 A One way, yes.

24 Q So -- because otherwise you might have a sizeable compact
25 population of black voters who would otherwise be submerged

1 county wide, is that correct?

2 A If there's a sizeable enough bloc, and you got contiguous
3 compact base, I think it's pretty clear that you ought to draw
4 the district that would be natural in that population.

5 Q All right. Now, and once you -- once you went over to a
6 single member district, particularly when you were in the State
7 House, you were running in and winning in just a small portion
8 of Wake County itself, correct?

9 A Yeah, much smaller portion, part of the county rather than
10 the full county.

11 Q Right. And so is it fair to say that the vast majority of
12 the elections you won in in the State House were in that
13 smaller portion of Wake County?

14 A Oh, sure. I mean, I ran from '84 through 2000 in that
15 smaller district, mostly without primaries, but generally in
16 the general election I had very little opposition and -- in the
17 primary and, quite frankly, not a lot in the general elections.

18 Q Right. And do you think part of that is because after
19 you'd won several elections, you had the benefits of
20 incumbency?

21 A Well, I'd like to think that it was because of how I
22 represented the district. I don't think that longevity in and
23 of itself necessarily commands that you keep holding a
24 position. I'd like to think that the citizens of the district
25 thought that I represented them adequately and well.

1 Q Sure, but the longer you personally represent the district
2 and do a good job, the more the voters get to know you
3 personally, correct?

4 A Yeah, but I would add that following that logic you'd
5 rarely get an incumbent defeated, and it happens more often
6 than you think; and, in fact, one of the prime examples is one
7 of these minority districts in Charlotte, where a sitting black
8 Senator -- where a black Senator-to-be defeated one of the most
9 powerful white legislators in the Senate in a district that had
10 only 28, 29 percent black population.

11 Malcolm Graham beat Fountain Odom down there, and
12 that's one of the districts, again, that had this same logic
13 applied to it, that any time you created a majority-black
14 district it had to go over 50 percent, which is the same logic
15 that was applied with respect to the Congressional
16 Redistricting.

17 Q But, Senator Blue, you agree with me that over time the
18 name recognition that you gathered in your district certainly
19 helped you win elections?

20 A Oh, I concede that it has value, yes.

21 Q All right.

22 A Before social media it had a lot more value than it does
23 now.

24 Q And, Senator Blue, you brought up your Senate district,
25 and since you brought it up, I want to make sure I clarify a

1 few points about it. Before 2011, you're in Senate District
2 14, correct?

3 A That's correct.

4 Q And it's in Wake County?

5 A Yes.

6 Q Before 2011, your Senate District 14 did, in fact, have a
7 total minority population, black plus other minorities,
8 exceeding 50 percent, is that correct?

9 A It has -- again, it started downtown, and it went out all
10 of Eastern Wake County, and in that area, there was a pretty
11 sizeable Hispanic population. I don't know what the percentage
12 was, but I think that the black and Hispanic population, most
13 of which was not registered to vote, by the way, may have -- it
14 did not exceed 50 percent, I don't think. I mean, I didn't
15 study close with stuff like -- but I don't think it exceeded
16 50 percent.

17 Q But you don't think -- your district before 2011 was
18 certainly not majority white, was it?

19 A I think it was majority white.

20 Q Do you recall testifying in the *Dixon v. Rucho* state court
21 proceedings?

22 A I do.

23 Q Do you recall testifying about this point about whether
24 your district was minority 50 percent plus before 2011?

25 A I recall -- I don't know what I said about it. The

1 district is what it is; but, again, I don't think that it is
2 majority minority. I know it's not majority minority black
3 voting-age population.

4 Q If you testified then that you believe that your district
5 before 2011 had minority population exceeding 50 percent, would
6 you be willing to stand on that assuming that's what the record
7 says?

8 A That my district had more than 50 percent black
9 population?

10 Q Black plus Hispanic?

11 A It may have. I mean, again, I don't -- I don't know
12 exactly what the black plus Hispanic plus Asian population was
13 in my district.

14 Q All right.

15 A But, again, the important thing is I know, because I had
16 studied it, it did not have a majority-black voting-age
17 population, and I stand by my statement that the black
18 population, black voting-age population, was somewhere in the
19 low 40s, 40, 42 percent. And, you know, forgive me, that's not
20 the most important thing to me in representing the district,
21 because I figured I represented all 190,000 people in the
22 district, not just 80, 90,000 who may have been
23 African-American.

24 Q I understand, but you have been involved in redistricting,
25 you understand the important distinctions between crossover

1 districts, say, and coalition districts, is that right?

2 A Yeah, I understand that.

3 Q And so you -- would you agree that if your district was
4 over 50 percent minority of all minorities, then that was a
5 coalition district not a crossover district? Would you agree
6 with that?

7 A Well, it depends on whether they were coalescing. It
8 depends on -- I mean, I think that the definition of a
9 coalition district is a district where there's evidence that
10 people are coalescing, that they're coming together for a
11 common purpose, not some predetermined description of it, at
12 least that's how I define a coalition district, and that's what
13 we tried creating in Wake County from about 1976 to 1980
14 forward.

15 Q So you were trying to create coalition districts?

16 A Coalitions between people of different viewpoints,
17 different races, different origins so that we were looking for
18 a common way to address the problems in the district so that
19 race played no issue in how you address the problems, but you
20 focused on dealing with the issues that you ought to as an
21 elected official.

22 Q All right. So what in -- what is -- in your
23 understanding, what is the difference between a crossover
24 district and a coalition district?

25 A I don't know whether those are terms of art the way you're

1 using them, but a crossover district I look at as a district
2 that was involved in *Strickland*. *Strickland* was a crossover
3 district because even though it was not a majority-black
4 district, historically white voters had crossed over and voted
5 for the black representative, and they had two or three in the
6 cycle from 2001 until *Strickland* was decided, two or three
7 black representatives.

8 And although it was not majority minority,
9 consistently the white vote would go for the African-American
10 candidate, whether primary or general election. That's what I
11 considered a crossover district, and that's what I thought that
12 *Strickland* was addressing.

13 Q All right. Do you know if any of the single member house
14 districts you ever ran in were majority white district of the
15 total population or voting-age?

16 A You mean other than the at large district that I ran in?

17 Q Right.

18 A In the '90s, because of the intervention of the Justice
19 Department in creating these districts initially, I think
20 initially pre-district, and I think it was 33 in the '90s, the
21 numbers changed in 2000. It may have been 13 or something, it
22 may have been another district number, but when they were first
23 created, the directive was to create all of these districts
24 somewhere, and the number that the Justice Department felt
25 comfortable could elect African-Americans.

1 For example, there was a district created in
2 Northeastern North Carolina where there's a pretty rich history
3 at the time of polarized voting that the Justice Department
4 rejected because it did not have in excess of 68 percent black
5 population in it, but that number over time came down, and the
6 Justice Department started accepting smaller numbers as one
7 would hope it would if the Voting Rights Act was having the
8 effect that it was designed to have.

9 And so the same thing may be true with respect to how
10 the initial majority minority districts were created in the
11 urban areas, in 1984 as well as in 2000 -- I mean, in '91 and
12 2000 I do know that there was a big push made in '91 to create
13 20 some majority minority districts, and we resisted that and
14 refused to do it, and that's why I think ultimately you had 10
15 or 12 majority-black districts with more than 50 percent black
16 voting-age population.

17 Q I appreciate that, Senator Blue. My question is actually
18 much more simple than that. It simply is do you know whether
19 you've ever run in Wake County in a House, a single member
20 House district, that was majority white?

21 A Majority white?

22 Q Yes.

23 A I think I probably have. Again, I don't know what the
24 final makeup -- how the district changed from 2000 -- from 1991
25 to 2000, but understand that Wake County -- Wake County's

1 population and the city of Raleigh's population increased
2 almost exponentially. So a county went from three, 400,000
3 people to a million by the time we got around to 2010, so my
4 district was growing and it was a downtown district and
5 downtown was gentrifying and whites were moving in.

6 The suburbs that were developing around it had mostly
7 whites moving in, so the district could have been
8 majority-black again -- I mean, majority white. I simply did
9 not study it. I may have looked at it when we finally went
10 back to redistricting as to what it finally looked like; but
11 so, yeah, during that period, it probably was majority white at
12 some point.

13 Q But you haven't looked at any data to confirm that?

14 A Gut feeling tells me that it was majority white at
15 different junctures; but, again, when you're getting 70,
16 80 percent of the vote, you don't go down to drill down to see
17 where polarized voting is occurring, and that's the kind of
18 result that we were getting in my House district and in the
19 Senate district. Not only me, but at districts that were less
20 than 50 percent majority-black majority.

21 The black candidate was getting in excess of
22 60 percent of the vote, and sometimes up towards 70 percent of
23 the vote and the general election; and so, again, you were not
24 so mindful as to who made up certain segments. If you ask me
25 whether I routinely won in majority white precincts, because

1 the voting tabulation districts were the precinct levels, I
2 consistently won, and so did other black candidates, in Wake
3 County in majority white precincts.

4 MR. STRACH: Your Honor, I have another couple lines
5 of questions.

6 THE COURT: Is now a good time to take a mid-morning
7 recess?

8 MR. STRACH: Yes, Your Honor.

9 THE COURT: All right. Let's take a 15-minute
10 recess. Before we walk out, let me see counsel up here at the
11 bench. We can do it with two, Farr and Hamilton will be fine.

12 (Bench conference as follows:)

13 THE COURT: I'm speaking for myself at this point.
14 I'm going to talk to these other judges about it over the
15 recess. During the course of the opening statements, which I
16 thought overall were very well done, there was some argument
17 back and forth, a comment about Eastern Bloc stuff and then was
18 responded to in kind, shall we say, during the -- and I'm
19 afraid that kind of set a stage for what I perceive to be --
20 these other judges may disagree with me -- questions and
21 answers that are running the gamut from factual to political
22 opinion to political argument in some respects.

23 And I'm not criticizing the witnesses. This is a
24 very difficult case to stay out of areas of political opinions
25 and views, and I'm not suggesting at this point that it should

1 stop. But my observation is that as we proceeded through
2 opening statements and have heard testimony from the first
3 witness, both through opening, the questions and various other
4 things, we've got, at least in my mind, we've got a mix.

5 And, again, these other judges may overrule me and
6 disagree with me on this, but we've got kind of a mix of
7 factual information, commentary on legal analysis of cases and
8 various other things, which are important part of it, but I
9 want to make sure in terms of the questioning that we stay
10 focused on, as I see it, at least the factual part of this
11 trial.

12 I don't want this thing to drag on to four days
13 because we've got a lot of commentary that may or may not be
14 helpful to get us to the final end result, and at least in my
15 mind the way to avoid it is make sure on both sides that the
16 questions are appropriate and tailored to elicit an appropriate
17 response. The more open-ended they are, the more inviting.

18 I say the whole thing again, these judges may
19 disagree, I'll update you after the break, but I don't want to
20 let the opening statement portion having set the tone for a lot
21 of commentary to come in response to what was heard during the
22 course of the opening statements, if that makes any sense.

23 I'm not asking you to do anything at this point, just
24 think about it. I'll talk to these other judges and see where
25 they fall on this, and then we'll go from there.

1 MR. HAMILTON: Thank you, Your Honor.

2 MR. FARR: Thank you, Your Honor.

3 (Bench conference concluded.)

4 THE COURT: All right. Let's take a 15-minute
5 recess.

6 (At 11:06 a.m., break taken.)

7 (At 11:23 a.m., break concluded.)

8 THE COURT: All right. Senator Blue, you may return
9 to the witness stand. You may continue.

10 MR. STRACH: Thank you, Your Honor.

11 BY MR. STRACH:

12 Q Senator Blue, I want to turn your attention for a moment
13 to the development of the 2011 enacted Congressional Plans at
14 issue in this case.

15 A Okay.

16 Q Did you at any point in the Legislative process in 2011
17 submit any alternative redistricting -- Congressional
18 Redistricting Plans yourself?

19 A Not me individually, no. We had several plans that I
20 looked at. There was a plan submitted, I think, by the -- I
21 was not the Democratic leader at the time, but there was a plan
22 submitted by the Democratic caucus in the Senate, and as you
23 alluded to earlier, there was a plan that may have been
24 submitted by the Black Caucus and the General Assembly, but --
25 and I looked at them. I didn't submit any individual plans

1 myself.

2 Q Do you know when those plans were submitted by the
3 Legislative Black Caucus and others on the Democratic side in
4 the 2011 redistricting process?

5 A I think they were some time after Senator Rucho and
6 Representative Lewis submitted their plans, I think. I'm not
7 absolutely sure since I didn't personally deliver them.

8 Q All right. Isn't it true that those were submitted to the
9 legislature on the first day of the redistricting session in
10 2011?

11 A I wouldn't disagree with that, I just don't know.

12 Q All right. And did you, with regard to -- well, there
13 were two different alternative plans -- there were actually
14 three. There were the plans submitted by the Southern
15 Coalition for Social Justice which were submitted earlier in
16 the process. Did you have any input on those plans?

17 A No input on them. I criticized them because I thought
18 that they unnecessarily, in some instances, were trying to
19 create majority minority districts where they weren't justified
20 and the percentages that some of them looked at.

21 Q Okay. So you criticized the SCSJ plan?

22 A Sure did, sure.

23 Q And who did you submit that criticism to?

24 A To the ones who were basically espousing them. I informed
25 their counsel that -- North Carolina is not Alabama or

1 Mississippi, quite frankly, and it did not have the same kind
2 of polarized voting history that those states had. Unlike
3 those other southern states, North Carolina had only 40
4 counties covered by Section 5 of the Voting Rights Act because
5 you hadn't had the practice as prevalent in North Carolina as
6 you had in those other southern states. And so I suggested
7 that some of the remedies were a one size fits all, that you
8 don't create these districts just because you can based on
9 race, that it goes in the opposite direction of where I think
10 our state and our country ought to be going.

11 There may have been some other plan, but I remember
12 specifically when I first heard of the plans proposed by the
13 southern coalition group.

14 Q And when you say you criticized the plans to their
15 counsel, I think, who was that?

16 A I'm trying to think who had it then. I know Anita Earls
17 represents the group. I'm not sure that it was Anita, but
18 there are various people who've been involved. Irv Joyner and
19 some of the other people who had looked at it.

20 Q All right. Did you ever publicly criticize the SCSJ
21 Congressional proposal?

22 A Did I have press conferences beating them up? No. There
23 was no need -- no need to publicly do it because I expressed my
24 opinions to the redistricting chairs. I did in my debate on
25 the Senate floor. I did in discussions. There was some Senate

1 committee, although I wasn't a member of the redistricting
2 committee where Senator Rucho gave me an opportunity to say
3 something, and I was critical of any effort to unduly pack
4 black voters into as few a districts as possible.

5 Q On the Senate floor in the debate on the 2011 plans, did
6 you ever criticize the SCSJ proposal?

7 A I criticized the proposal that was before us, which was
8 Rucho 1 or -- Rucho 2, I think, was the final plan we were
9 acting on, and I openly criticized it and made probably a
10 30-minute speech. It and any plan that unduly packed black
11 voters, whether it was a Congressional Plan or a House Plan or
12 a Senate Plan without justification for it, and I thought that
13 the simple justification were those set forth initially in the
14 *Gingles* decision, where you could show sufficient polarization,
15 and I figured you couldn't do that in the districts that were
16 created in either of those plans, or that it had not been done
17 for this election cycle.

18 It had been done 20 years ago and maybe adopted 10
19 years ago, but there was not any kind of polarization study
20 done, that I'm aware of, on the districts that were created,
21 either Congressional or Legislative in 2011. And I can't help
22 but think that a lot of the counties had elected black
23 sheriffs. They had elected black officeholders in many
24 positions since 1990.

25 And so my first argument, and I suggested to Senator

1 Rucho in my debate on the Senate floor was that in my mind the
2 Fourteenth Amendment required that you have a compelling state
3 interest to do it, and then if you could find that, it had --
4 that solution had to be narrowly tailored to address the issue
5 that you were trying to address, not just packing districts
6 with 50 percent plus when they had performed the way they were
7 designed to perform with less than 40 in many instances, but
8 certainly less than 50 percent majority minority population in
9 90 plus percent of the cases.

10 And so as I criticized that with Senator Rucho, I
11 hope that criticism, or at least observation, would have
12 registered with the sponsors of the other plans because they
13 backed off of their plans.

14 Q Okay. So when the -- when the -- well, let me ask you
15 this: Did you ever reduce your criticisms of the SCSJ plan to
16 writing and submit that to anyone?

17 A No.

18 Q Other than your debates on the Senate floor, did you ever
19 reduce your criticisms of the proposed enacted plans and submit
20 that to anyone? Did you ever reduce those to writing?

21 A I have. I did a lecture at the Wake Forest law school
22 making observations about all of the maps, and I've spoken to
23 law school groups at various times about the maps and what I
24 thought some of the flaws were. I have -- not just law school
25 groups, but civic groups, classes, so I have criticized them on

1 many instances; and, again, my criticism is not at the
2 individuals specifically who did it, but I just think that
3 they're out of the spirit of the Voting Rights Act, and they
4 tend to segregate more than to lead us to an integrated
5 continuous society.

6 Q Right. And all I'm asking, Senator Blue, is there's
7 voluminous records in this case. I'm not aware of a memo or
8 any writing from you to Representative Lewis or Senator Rucho
9 criticizing either the SCSJ plans or the proposed enacted
10 plans. Am I missing something or is there no such --

11 A No, sir. I never directed any writings to Senator Rucho
12 or Representative Lewis. My comments to them were in the
13 context of the Legislative setting, and I did a rather lengthy
14 floor debate on the Senate plan; and, again, as I said, I
15 commented at the committee, and I commented to the press when
16 they would ask me on various of these plans. But, no, I never
17 did any formal submission to Senator Rucho or Representative
18 Lewis regarding them, other than the normal way we communicate
19 about Legislative issues.

20 Q All right. And you talked about black candidates winning
21 an election. Is it fair to say that most, if not all, of your
22 experience with black candidates winning elections is in Wake
23 County where you've been most of your career, is that correct?

24 A No, that's not correct.

25 Q Do you have specific information or knowledge about

1 similar type information regarding candidates in the northeast
2 part of the state?

3 A Yeah, there are instances. As I said, there are black
4 sheriffs in counties up there that are not majority-black.
5 There are commission chairs. There are school boards. I mean,
6 the history in the state in the 40 covered counties, at least
7 those that were covered initially by the '65 Voting Rights Act,
8 was that polarized voting was commonplace, and I know that in
9 the 1980s formulation that led to *Gingles*, there was testimony
10 that no black candidate had ever gotten more than 10 percent of
11 the white vote east of Interstate-95, you know, one county over
12 from Wake County, but in the other 60 counties, that was not
13 necessarily so.

14 And one would think over the 30-year period, as we've
15 basically had more desegregation of public schools, mind you
16 that didn't start in earnest until the 1970s, and this data was
17 predicated on stuff that happened before 1980, but over the
18 30-year period, one would certainly hope that if you did a
19 current day polarization study, you would find that there would
20 be much greater cross-racial voting in those areas.

21 And what I'm suggesting is that study was not done.
22 If that study showed that you still had polarized voting,
23 African-American still could not elect the candidates of their
24 choice, be them black or white, and that you had a geographical
25 area that was sufficiently compact enough that you would then

1 need to do something to remedy that. But the remedy shouldn't
2 be put in place to last in perpetuity, because when you put it
3 in place to last in perpetuity, you're simply preserving the
4 status quo forever, and that's what we want to move away from
5 and that's what I think the Voting Rights Act was designed to
6 do.

7 Q Senator Blue, were you aware of the polarization study
8 conducted by SCSJ expert Dr. Block?

9 A No, I was not -- I didn't see that. SCSJ?

10 Q SCSJ. Were you aware of the study by their expert of
11 racially polarized --

12 A I never saw that. It was not -- it was not part of our
13 deliberation in the Senate debate.

14 Q All right. If the transcripts in the record say
15 otherwise, you'd obviously be willing to rely on the written
16 record?

17 A Oh, ab -- yeah, I don't know. I mean, I never heard
18 anybody mention those polarized studies in our debate. It
19 certainly was not mentioned in the Senate debate. What was
20 mentioned was that somebody had studied polarized voting in the
21 '90s and 2000 and that same thing was still occurring, but
22 there was no current study of polarized voting on a
23 district-by-district basis as far as I know. And it was my
24 feeling, and I think a requirement, that you look at it on a
25 district-by-district basis, especially in a state like North

1 Carolina where you had 40 counties that had a different history
2 than the other 60 counties.

3 Q Right. And when the state was covered under the Voting
4 Rights Act, it was counties that were covered, right, not
5 districts? Weren't there 40 counties, not 40 districts that
6 were covered?

7 A Forty counties, yes.

8 Q Right. And were you also aware of a racial polarization
9 study done by Dr. Brunell who expanded upon Dr. Block's work?
10 Were you aware of that?

11 A In 2011?

12 Q In 2011, yes, sir.

13 A 2011?

14 Q 2011.

15 A No, nobody referred to that specifically. I didn't see
16 that as part of the presentation before the committees.

17 Q All right. So your testimony today is based on your
18 belief that there was racially polarized voting analysis that
19 was lacking before the legislature in 2011?

20 A My testimony today is I was not aware of any
21 district-by-district polarization study that was done based on
22 the 2010 census and the other factors that would have been used
23 for 2011 redistricting. If it was, in fact, looked at, it was
24 not made part of the debate or the arguments in the Senate and
25 when the plan was presented to us, neither the Congressional

1 Plan nor the Senate Redistricting Plan.

2 Q All right. And just to be clear, though, your testimony
3 today is you are not aware of, and you never read, the reports
4 by Dr. Block or Dr. Brunell?

5 A I know that there was a report that said that the
6 polarization studies from 20 -- from 1990 or '91 and 2001 show
7 that there was polarized voting in North Carolina and that that
8 polarized voting continued. I never saw any data, was not
9 presented with any report or any other indication that there
10 was a polarization study done on a district by district basis
11 either in the Congressional Districts or the Legislative
12 Districts that were made majority minority black in 2011.

13 Q All right. Now, Senator Blue, turning -- shifting back to
14 Congressional District 1, and this is related to this
15 polarization issue we've been discussing. Isn't it true that
16 at least as late as 1997 the conditions existed in that
17 district for what we call a VRA district or a majority-black
18 district?

19 A In the Congressional District?

20 Q Yes, sir.

21 A Yeah, because there was a district that was created and
22 nobody -- nobody challenged it in a serious way.

23 Q And in the exhibit that we looked at earlier, Exhibit 73,
24 which was the preclearance submission for the '97 plan, do you
25 recall that the state stated in that that the *Gingles* factors

1 were still in effect in CD 1 at that time?

2 A In 1997, yes, because there had been a study done in that
3 time frame within the last three or four years, I think.

4 Q All right. Now, you said that in 2001 you were on the
5 redistricting committee that created the redistricting plans
6 that year, is that right?

7 A As I recall, yes.

8 Q All right.

9 A And, again, understand, Mr. Strach, that in '80, '90, and
10 2000, all members got access to the redistricting process, the
11 debates in the redistricting committees, and members were
12 consulted individually about their proposed districts, be they
13 Republican or Democrat. That was the process on those
14 districts prior to 2011.

15 So, as I said, I participated in discussions about
16 Congressional Districts as well as House districts in the 2000
17 redistricting cycle. I was not involved in 2003 because I had
18 left the General Assembly, and ultimately the 2003
19 redistricting is what determined the districts that we all ran
20 under from 2003 to 2010.

21 Q And isn't it true, Senator Blue, that even as late as
22 2001, when CD 1 was created, that the conditions satisfying the
23 *Gingles* factors existed then, too?

24 A I think they probably did in the counties where the
25 studies had been done, but the difference is that there were

1 multiple counties dragged into the Congressional District 1 in
2 2011 that were not Section 5 counties, and specifically I
3 mentioned Durham County again.

4 Durham County had never been a Section 5 county. In
5 the *Gingles* decision the Court specifically found that there
6 was not polarized voting in Durham County that -- or
7 specifically held that there was not polarized voting in Durham
8 County, that Durham County residents, African-American and
9 others, could elect the candidates of their choice, and so
10 there was no requirement to even draw a minority district in
11 Durham, even though it was easily drawable because you had a
12 compact enough population to do it in.

13 The case law didn't require it. The General Assembly
14 just decided to draw one so that it wouldn't be sort of
15 standing out like the others.

16 Q Now, you agree, though, that other than Durham County,
17 there are a lot of other counties in 2011 CD 1 that are in fact
18 Section 5 counties, is that correct?

19 A Absolutely, I agree totally with you. And, again, most of
20 the counties in that district are east of Interstate 95.

21 Q And Senator Blue, with regard to the finding in *Gingles*
22 that there was no polarized voting in Durham, that was in the
23 context of a multimember district, is that correct?

24 A Um-hum.

25 Q Okay. Not a single member district?

1 A But if there's no polarized voting in a multimember
2 district, there's none in a single member district. The
3 finding is no polarized voting.

4 Q Right.

5 A That the whites vote for African-Americans and a
6 percentage high enough so that you can't prove that it's
7 polarized voting against African-Americans.

8 Q Senator Blue, this relates to the point we made earlier
9 about single-shot voting, correct. Wasn't it possible to
10 single-shot vote in Durham *in the Gingles* era?

11 A No, because that was a state-wide phenomena. That
12 happened in Mecklenburg. That happened in Cumberland, which
13 was a covered county, Cumberland was.

14 Q Right. I understand. The only point I'm trying to get
15 you to agree with is that district was a multimember district
16 in Durham and folks could single-shot if they wanted to?

17 A But the point is in *Gingles* the Court said that you don't
18 have to draw a single member district in this multimember
19 setting. Regardless of what they're doing, you cannot show
20 that there's white polarized voting against black candidates.
21 That was the specific holding in *Gingles*.

22 Q All right. Well, *Gingles* speaks for itself.

23 A Yes, sir.

24 Q We'll let the Court decide what *Gingles* means. In
25 Congressional District 1, Senator Blue, under the 2001 plan, do

1 you recall that the black percentage of Democrats in that
2 district was a super majority?

3 A The black percentage of blacks in the Democratic primary
4 was a majority.

5 Q Yes. Wasn't it a super majority, Senator Blue?

6 A Super majority being what?

7 Q Over 60 percent?

8 A I don't know whether that was the fact or not; and, again,
9 what I remember looking at it is that Eva Clayton, who
10 represented the district at the time, had consistently gotten
11 higher percentages of the vote after her initial run in a
12 district that was somewhat different against now Congressman
13 Walter Jones, and her numbers kept going up. And I think maybe
14 by the end of the decade, she was getting close to 70 percent
15 of the vote in the general election and not having any serious
16 primary opposition or any opposition that amounted to very
17 much, and may have been getting 80 plus percent when she was
18 challenged in the primary.

19 I mean, it was clearly a district that Clayton was
20 going to consistently be elected in and history showed that
21 everybody else, even though the numbers went down, were elected
22 in it. Frank Ballance was elected in it, first term by a
23 comfortable margin. G.K. Butterfield was -- has consistently
24 been elected in it, prior to 2010 when it had far less than
25 50 percent of black voting-age population.

1 Q Right. My question though is do you have any reason to
2 dispute me when I say that the black percentage in the
3 Democratic Party, in terms of controlling the Democratic Party,
4 is over 60 percent?

5 A I just don't know. I just don't know. I don't know that
6 that was one of the factors that really was focused on that
7 much. What was looked at is that there was a feeling that
8 that -- that the *Gingles* factors were still prevalent in the
9 1st Congressional District as it was comprised, and I think all
10 but one or two counties in the district, and it may be all of
11 them, were Section 5 counties. But Durham County, the most
12 pronounced of the counties in it now, had never been a Section
13 5 county, had never violated any of the *Gingles* principles, and
14 to build a district around Durham County saying that you are
15 forced to take the percentages above 50 percent just didn't
16 quite register. That's the only point I was trying to make.

17 MR. STRACH: Your Honor, may I approach the witness
18 with an exhibit?

19 THE COURT: You may.

20 BY MR. SPEAS:

21 Q Senator Blue, what I've handed you has been marked
22 Defendant's Exhibit 2.64.

23 A Um-hum.

24 Q It's a chart regarding the 2001 Congressional Plan, and
25 there's some data on this chart, and I simply want to draw your

1 attention to about the middle of the chart. You'll see the top
2 part of the chart regards District 1. Do you see that?

3 A Yes.

4 Q And if you move over to the right on this chart, at the
5 top part of it, there's a column called "black portion of
6 DEMS," do you see that column?

7 A I see that.

8 Q And so for Congressional District 1, the black portion of
9 DEMS in that particular district under the 2001 plan was
10 66.55 percent. Do you see that?

11 A Yep, I see that.

12 Q All right. Do you have any reason to believe that that's
13 incorrect?

14 A I have no reason to believe that that's correct for 2010.
15 It doesn't say what it is for 2008 and 2006, but, no, I don't
16 dispute that.

17 Q And at the bottom of that column, there's a number that
18 says that state-wide, without regard to districts,
19 41.38 percent of DEM, Democrats, are black, do you see that,
20 the last number in that column below?

21 A I see that, yes.

22 Q So the proportion of Democrats who were black in
23 Congressional District 1 was significantly greater than their
24 state-wide proportion. Would you agree with me on that?

25 A I agree with you on that, and that's in 2010 before

1 redistricting.

2 Q This was on -- this was in -- for 2000 -- right, that's
3 right, this is for the 2001 plan --

4 A Um-hum.

5 Q -- correct?

6 A Um-hum.

7 Q Now, you were involved in the creation of the 2001
8 Congressional Plan, correct?

9 A Um-hum.

10 Q As part of the Redistricting Committee?

11 A Yes.

12 Q Why would it be necessary to ensure that black voters were
13 a super majority of the Democrat Party in that district in
14 2001?

15 A A good portion of the district consisted of whole
16 counties, and so you would tend to, I guess, dilute the
17 white -- the overall population. I don't know what this number
18 would look like in the 2012 election, the 2011 redistricting
19 plan, but you're talking about the percentage of voters, not
20 the percent of black voting-age population of black registered
21 voter I take it. You're talking about those who were inspired
22 enough to go vote in 2010, and so I don't know what -- I'm
23 trying to figure out what the numbers mean and how they would
24 compare with the current numbers, say, 2012, because in 2012
25 probably it was a much higher percentage of -- the black

1 portion of the Democrats was probably much higher than the
2 number that you see here.

3 Q Right. And I'm just focused on 2001 right now, if that's
4 okay. Didn't you and your colleagues in 2001 ensure that
5 blacks were a super majority of Democrats in that district to
6 ensure that in a race between a black Democrat and a white
7 Democrat that the black voters could control the outcome of
8 that race?

9 A That was part of the -- not necessarily that the black
10 voter -- the black candidate would control it, that the black
11 citizens in that district would be able to elect the candidate
12 of their choice. Now, what the numbers looked like in 2010,
13 Mr. Strach, would be totally different than what they looked
14 like in 2001.

15 And the reason that they would be different, you've
16 already pointed out. That district lost more than 15 percent
17 of its population base. It lost -- it was not -- not lost it
18 but did not increase its population base. It was almost
19 100,000 people short at the redistricting effort, so it changed
20 from 2001 to 2010, and you're giving me numbers to comment on
21 that are based on turnout as opposed to who's registered or
22 who's black voting-age population. I'm simply trying to
23 understand it. I'm not trying to evade your question, but I'm
24 simply trying to understand what you want me to observe on
25 this.

1 MR. STRACH: That's fine, Senator Blue. I actually
2 think you've answered the question. Your Honor, I don't have
3 any further questions.

4 THE COURT: Redirect?

5 MR. SPEAS: No, Your Honor, thank you.

6 Your Honor, we would call Congressman Mel Watt to the
7 stand.

8 (Witness sworn by the clerk.)

9 MELVIN WATT,

10 PLAINTIFF'S WITNESS SWORN AT 11:52 a.m.

11 DIRECT EXAMINATION

12 BY MR. SPEAS:

13 Q Would you state your name for the record, please.

14 A Melvin Watt.

15 Q And would you tell the Court a little bit about where you
16 grew up and where you went to school?

17 A I was born in Mecklenburg County outside of Charlotte.
18 Went to high school, segregated high schools -- schools all the
19 way -- public schools in Mecklenburg County.

20 Graduated from high school in 1963, and then went on
21 to the University of North Carolina, got a BS degree in
22 business administration from the University of North Carolina
23 at Chapel Hill in 1967, and then went to Yale Law School and
24 got an LLM, which was subsequently converted to a JD degree
25 from Yale University Law School in 1970.

1 Q And did you practice law in North Carolina for thereafter?

2 A I did. I went back to North Carolina in 1971 and
3 practiced law from 1971 to 1990 -- I guess early 1993 in
4 Charlotte.

5 Q And what firm were you with?

6 A The firm at that time was Chambers, Stein, Ferguson &
7 Lanning. In subsequent iterations of it, it was known as The
8 Chambers Firm.

9 Q And was it a firm significantly involved in civil rights
10 litigation?

11 A It was, but I went to the firm, actually, to -- because
12 there was a recognition that there was more and more an
13 economic component to civil rights. And so, my role was really
14 to start a business practice, and I did -- that's basically
15 what I did for 20 years, small businesses, real estate, estates
16 work, and some workers' compensation.

17 Q At some point, did you become interested in politics?

18 A Yes. I got a call from Harvey Gant one day after he had
19 been appointed to the Charlotte City Council to replace an
20 individual who had gone on to the State Senate. And he had to
21 run a campaign, and he asked me to be his campaign manager. I
22 think that was 1974. And he was running for the Charlotte City
23 Council in 1975, I believe it was.

24 Q Okay. And as a result of that experience, did you
25 learn -- did you become interested in running for office

1 yourself?

2 A No, not really. I managed his political campaigns for
3 city council in '77 -- '75, '77, and then in 1979, he called
4 and said he was going to run for mayor of Charlotte, and I
5 managed his campaign for mayor of Charlotte. We lost that
6 election by about 95 votes out of 100,000 votes cast in the
7 Democratic primary. So he was out of office.

8 Then, two years later, he ran for the city council
9 again and was overwhelmingly elected, became the mayor pro tem.
10 And then two years after that, he ran for mayor again. I
11 managed that campaign, and he was elected mayor of Charlotte in
12 that election.

13 Q And --

14 A And then, subsequently, he, in 19 -- let me get my years
15 right -- 1989, he called me and said he was going to run for
16 the United States Senate against Jesse Helms, and I managed his
17 first state-wide campaign in 1990. And, of course, he lost
18 that election. And then they created the 12th Congressional
19 District based on the 2000 Census.

20 And I called him and said I was ready to manage his
21 campaign for Congress, and he told me he was not going to run,
22 and suggested that I might consider doing it. And I did.

23 Q And that was in 1992 that you first ran for Congress?

24 A 1992, yes.

25 Q And I believe you were elected for 11 terms?

1 A I was elected for 11 straight terms, right.

2 Q You're not currently in Congress?

3 A That is correct.

4 Q What are you doing at present?

5 A I'm the Director of the Federal Housing Finance Agency as
6 an independent agency that has regulatory supervision over the
7 federal home loan banks and Fannie Mae and Freddie Mac.

8 Q And, Congressman, over the years, were you aware of the
9 percentage of your district that was African-American?

10 A Yes, I was. I tracked it. It was constantly in
11 litigation the first 10 years I was in Congress. I think the
12 district changed at least four or five times, some of which I
13 ran in and some of which got thrown out before the subsequent
14 election. But in the early stages, the Congressional District
15 was majority -- the voting-age population was majority
16 African-American.

17 And then the Court ruled that race was being taken
18 into account too much, and so they drew the district down. And
19 there was district that I ran in in which the African-American
20 population was about 35 or 36 percent, and then that one got
21 changed. And we finally settled on a district that was
22 approximately 40, 41, 42 percent African-American, and that one
23 was approved by the Supreme Court.

24 Q Is it accurate, Congressman, that at every election since
25 1998, the African-American voting-age population in your

1 district was less than 50 percent?

2 A That's correct.

3 Q And at one point, it actually got down to, I think, 32 or
4 so percent?

5 A Somewhere -- I was thinking it was a little bit higher
6 than that, but it probably was down to 32 percent.

7 Q And like most politicians, you probably are familiar with
8 how you did in those elections?

9 A Yes, I tracked that. And when the district was over
10 40 percent, I generally got between 60 and 65 percent of the
11 vote. The one occasion where the minority percentage had been
12 drawn down to 32 or whatever it was percent that we agreed on,
13 I got approximately 55 percent of the vote. That was the
14 election in which they spent about a million dollars against me
15 telling people how terrible I was.

16 Q Congressman Watt, you're a student of politics. Tell the
17 Court what you think accounts for those margins of victory in a
18 district that was, since 1998, less than 50 percent
19 African-American?

20 A Well, I would like to say good representation first. I
21 think that is a factor in trying to serve all of the members of
22 the Congressional District without regard to race or gender or
23 ethnicity. Over the years, and actually going all the way back
24 to when I managed campaigns for Harvey Gant in Charlotte, we
25 had developed a pretty strong process for building coalitions

1 across racial lines, across precinct lines, and racial
2 attitudes were in the process of changing, and they have
3 continued to change over time.

4 Q Now, let's turn our attention to the 2011 redistricting.
5 You were still in Congress at that point?

6 A That's correct.

7 Q Okay. Were you approached by Senator Rucho to meet with
8 him with regard to redistricting?

9 A Yes, I was. He asked me if I would come and meet with him
10 and give him my thoughts about congressional redistricting in
11 general and redistricting. And I told him I'd be happy to do
12 that, and I went and met with him.

13 Q Would you share with the Court what you shared with
14 Senator Rucho on that occasion. That was in April, you said?

15 A April 25th of --

16 Q 2011?

17 A -- 2011. I went to Raleigh with my district director and
18 met with what we were told was going to be Senator Rucho and
19 Representative Lewis, but Representative Lewis never showed up
20 for the meeting. There was a staff person who came with
21 Senator Rucho, so it was the four of us.

22 And by that time, I had looked at the numbers. My
23 Congressional District, the 12th Congressional District, was
24 approximately 2800 people over what the one person, one vote
25 mandate would have required. And so I suggested to Senator

1 Rucho that we -- that because the district had gone through so
2 much litigation historically, and because the Supreme Court had
3 finally approved the district, that the wise thing to do would
4 be to do what I called a minimal change district for the 12th
5 Congressional District.

6 And I suggested to him he wait to do that by dropping
7 a couple of precincts that, for various reasons, I had felt
8 like I had not served as well as I had the rest of the
9 district, and by adding some smaller precincts to get to the
10 magic number of people in the Congressional District.

11 Q Anything else occur at that meeting that you recall? You
12 simply provided him your views about your district?

13 A No. He seemed receptive to the idea, and there were no
14 maps exchanged at that time. I identified, I think, the
15 precincts that I suggested might be taken out. I'm not even
16 sure I identified necessarily the precincts that would be put
17 in, the smaller precincts. But the meeting was cordial and I
18 thought -- I thought constructive.

19 Q Had you known Senator Rucho before?

20 A I had. Senator Rucho was my orthodontist before I went to
21 Congress. I still have some of his work in my mouth. And I
22 considered him a friend. And so, in a sense, I mean, it was --
23 I thought he was asking me to give him advice because he was
24 telling me that he was going to be the -- or had been appointed
25 by that time as the Chair of the Redistricting Committee, and

1 was seeking my advice as a friend.

2 Q Would those changes to those two or three precincts have
3 significantly affected the African-American population in that
4 district?

5 A No, I don't think so. I don't think so. Basically, what
6 I suggested to him was my Congressional District, throughout
7 its history, had oriented generally up Interstate 85. And
8 initially, a part of it went up Interstate 77. And at some
9 point, if you went up Interstate 77, you'd get the towns of
10 Huntersville, Cornelius, Davidson where Davidson College is,
11 and my district actually went all the way into Iredell County,
12 one of the iterations of it, until it got shot down.

13 Well, in 2000 -- based on the 2000 Census, when the
14 districts were drawn, the folks in Davidson around Davidson
15 College wanted to stay in my Congressional District, and the
16 rest of the district was going to be oriented up Interstate 85.
17 So they kept Davidson in my Congressional District by going
18 across the Cabarrus County line to pick it up. And it was just
19 inconvenient to get up there to serve the people in Davidson --
20 in Davidson, North Carolina, not Davidson County.

21 Q Okay. So when you left that meeting, you had no sense
22 that the population in -- the African-American population in
23 the district would be significantly increased?

24 A No. In fact, I was suggesting to him that a minimal
25 change district would comply with the law. And I didn't see

1 any need to increase African-American percentage in my
2 Congressional District because I was getting 65 percent of the
3 vote.

4 Q Did you subsequently learn that Senator Rucho planned, in
5 fact, to increase the African-American population in the
6 district significantly?

7 A I learned that later. He called me one weekend when I was
8 in Charlotte and asked me if I would meet with him again, and I
9 said, yes, but I don't want to drive all the way to Raleigh to
10 do it. Both of us live here in Mecklenburg County; why don't
11 we do it here in Charlotte? And he invited me to his home.

12 And I went to his home on a Monday morning, and we
13 had a meeting at his home. It was kind of an interesting
14 meeting because when he called me on the phone, I was expecting
15 him to show me maps and tell me specifically how they planned
16 to draw the district because it was later in the process by
17 that -- by the time of that meeting.

18 Q Was this in June?

19 A I think it was in June. And I got to the meeting, and it
20 really was kind of an uneventful meeting in the sense that
21 there were no maps. And at some point, I mean, I could sense
22 that Senator Rucho was not very comfortable. And at some
23 point, he said to me that his leadership had told him that he
24 had to ramp the minority percentage in my Congressional
25 District up to over 50 percent to comply with the Voting Rights

1 Law. And I said -- I laughed. And I think his discomfort was
2 because his leadership had told him that he was going to have
3 to go out and justify that to the African-American community.

4 So I chuckled and said, Bob, you won't be able to
5 justify this to the African-American community. It is not --
6 the Voting Rights Act does not require it. It does not mandate
7 it. And the African-American community will laugh at you
8 because I'm getting 65 percent of the vote in a 40 percent
9 black district. If you ramp my Congressional District
10 African-American percentage up to over 50 percent, I'll
11 probably get 80 percent of the vote, and -- and that's not what
12 the Voting Rights Act was designed to do.

13 Q Just a matter of curiosity, what percentage vote did you
14 get in 19 -- I'm sorry, in 2012 in the newly redrawn 12th
15 District?

16 A In the newly redrawn district, I got about 80 percent of
17 the vote, just like I had predicted to him I would.

18 Q Did you express your concerns about this decision to the
19 North Carolina legislature?

20 A I did.

21 Q And did you ask Senator Graham to read a letter into the
22 record of the debates of the North Carolina General Assembly
23 about this matter?

24 A I did. I addressed a letter to Senator Rucho and
25 Representative Lewis as chairs of the committee, and I copied

1 that letter to a number of other people. And Senator Graham --
2 State Senator Graham was a friend of mine, and I asked him if
3 he would read it into the record first at the hearing that they
4 were having, not on the legislative floor. And then,
5 subsequently, I did a second letter that I asked him to read on
6 the floor of the Senate, I guess it was.

7 Q Okay. Congressman, would you turn to your tab in the
8 notebook in front of you.

9 A I don't think I have a notebook in front of me. I'm
10 sorry.

11 MR. SPEAS: If I may approach the witness, Your
12 Honor.

13 THE COURT: You may.

14 BY MR. SPEAS:

15 Q Turning to Congressman Watt tab, and I'd like for you,
16 Congressman, to turn to tab 30 in that notebook. And I would
17 ask you if that is the transcript of the proceedings of North
18 Carolina Senate on July 25, 2011, at which Senator Graham read
19 your remarks into the record?

20 A It appears to be, yes, it does.

21 Q And your remarks begin on page 38 of -- I'm sorry, they
22 begin on page 37 of Exhibit 30. Do you see where your remarks
23 begin?

24 A I do, yes.

25 Q Okay. And I would like for you, Congressman, if you

1 would, to turn with me over to page 38 of your remarks, and we
2 have this up on the screen. I'd like for you to read for the
3 Court the comments in your letter beginning at line 6 on
4 page 38 and continuing to line 23.

5 A It says, Plan 1, propose to increase the African-American
6 population in the 12th District from approximately 40 percent
7 to over 50 percent. I have repeatedly expressed to Senator
8 Rucho my belief that increasing the African-American population
9 in the 12th District is not required, justified, or sanctioned
10 by the Voting Rights Act.

11 The Voting Rights Act, which I was instrumental as a
12 member of the House Judiciary Committee and as Chairman of the
13 Congressional Black Caucus to get Congress to reauthorize and
14 extend, was designed to counteract the ethnic and racially
15 repolarized voting and level the playing field for
16 African-American candidates and voters. It was not, as several
17 Court decisions have indicated, designed to create racial
18 ghettos in which African-American candidates are given
19 inordinate and unreasonable election advantages.

20 Q Do you stand by those words today?

21 A I absolutely do.

22 MR. SPEAS: Thank you. No more questions.

23 THE COURT: Cross-examination? And just for the
24 record, I don't know, ultimately, in terms of the official
25 record whether these books will be a part of it, so I do think

1 when you have him turn to a tab, you probably ought to note the
2 actual exhibit number. You understand what I'm --

3 MR. SPEAS: And it's exhibit -- it's Plaintiff's
4 Exhibit 30.

5 THE COURT: This one will be -- looks like
6 Defendant's 30.

7 MR. SPEAS: There is a version in our record of --

8 THE COURT: Okay.

9 MR. SPEAS: -- Plaintiff's 30. There is also in
10 their record at 30.

11 MR. FARR: May I make a suggestion to my learned
12 colleague?

13 THE COURT: Make it to me and we'll see what he
14 thinks of it.

15 MR. FARR: All right. Perhaps the Court might think
16 this is a good idea. I don't know why we couldn't just put an
17 exhibit sticker on this notebook, like a class exhibit sticker.

18 THE COURT: Whatever. In terms of an official
19 record, I just want to make sure that ultimately at the end of
20 the day, it's not confusing. So, for now, it's Plaintiff's 30?

21 MR. SPEAS: Plaintiff's 30.

22 MR. FARR: Defendant's 30?

23 THE COURT: Defendant's 30.

24 MR. SPEAS: Defendant's 30.

25 THE COURT: All right.

1 MR. SPEAS: Thank you.

2 THE COURT: Defendant's 30.

3 MR. SPEAS: It has a plaintiff's number. Okay.

4 Thank you.

5 THE COURT: All right. Cross-examination?

6 MR. FARR: Yes, Your Honor. I have a couple things

7 I'd like to do. I would like to approach Congressman Watt.

8 Congressman Watt, may I address you as Congressman

9 Watt?

10 THE WITNESS: I've been called worse. Yes.

11 MR. FARR: Thank you, sir. I'd like to approach

12 Congressman Watt and give him a copy of exhibit -- Defendant's

13 Exhibit 126, which is the map notebook which I handed up to the

14 Court previously.

15 THE COURT: All right.

16 MR. FARR: And I'd also like to have an easel up

17 there so I could put some blowups of the map up so the Court

18 and Congressman Watt could see some blowups of a couple of

19 these maps, if that would be all right.

20 THE COURT: This is Defendant's Exhibit 126?

21 MR. FARR: Yes, sir.

22 THE COURT: All right. Any objection to Defendant's

23 126?

24 MR. SPEAS: No, Your Honor.

25 THE COURT: All right.

1 (Discussion regarding placement of exhibits.)

2 MR. SPEAS: Your Honor, may I stand here?

3 THE COURT: You may.

4 CROSS-EXAMINATION

5 BY MR. FARR:

6 Q Okay. Congressman Watt, I want to go through the
7 historical maps of the 12th District, and that's what
8 Exhibit 126 is, so could you just turn in Exhibit 126 to Tab 1?
9 Do you see Tab 1?

10 A Yes.

11 Q Now, does Tab 1 include a map of the original version of
12 the 1st Congressional District as it was enacted in 1991? You
13 can stay at the exhibit because there's a session log attached
14 at the beginning of it.

15 A If you're asking me if I know whether this is the map, the
16 answer is no. I mean, I take your word for it that it is, but
17 I -- I mean, it's been a lot of water under the bridge since
18 this map was drawn. And I was -- you should also know that I
19 was not really involved in the drawing of any of these maps. I
20 was the -- my district was the subject of some of them, and I
21 represented the district throughout, but I was not -- in the
22 state legislature, I was not actively participating in the
23 drawing of maps.

24 Q Okay. But the -- is my memory correct, Congressman Watt,
25 that you were the first person to run in Congressional District

1 12?

2 A Yes.

3 Q Okay. And do you recall that in '91, the General Assembly
4 passed a map that only had one majority-black district, and the
5 Justice Department objected to that under Section 5?

6 A I remember that, yes.

7 Q Okay. And there have been a bunch of cases about
8 Congressional District 12, and are you familiar with those
9 cases?

10 A Generally, yes.

11 Q Like the *Shaw* case. You're familiar with that?

12 A Generally, yes.

13 Q You're familiar with *Cromartie* case?

14 A Generally, yes.

15 Q Okay. Now, do you recall that when the Justice Department
16 objected to the first Congressional Plan, that they suggested
17 that the State create a majority-minority coalition district
18 running from Mecklenburg County to Wilmington?

19 A I don't have any personal knowledge of that other than
20 what I read in the newspaper. I mean, I was not involved in
21 that process, to be quite honest.

22 Q Well, do you recall that that was what the objection from
23 the Justice Department said?

24 A I recall that's what I read in the newspaper, yes.

25 Q And did the General Assembly enact a second majority-black

1 district running from Charlotte to Wilmington?

2 A I don't recall whether they did or not.

3 Q Okay. Well, let's turn to Tab 2. And can you recognize
4 that as the 1992 Congressional Plan that first created the 12th
5 District?

6 A This is the one that appears to run from Gastonia and
7 Charlotte on the south to Durham on the north. Is that the one
8 you're referencing?

9 Q Right.

10 A Yes.

11 Q And this was the district that was the subject of the *Shaw*
12 litigation; is it not?

13 A I think that's correct.

14 Q And in the *Shaw* litigation, there was no ruling on the
15 legality of the 1st Congressional District as it appears in
16 this map; is that correct?

17 A I have no idea, to be quite honest with you.

18 Q Okay. And in the *Shaw* case, the second time it went to
19 the Supreme Court, the Supreme Court ruled this version of
20 District 12 to be an illegal racial gerrymander; is that
21 correct?

22 A I think that's correct, yes.

23 Q All right. And then, if you turn to Tab 3, do you
24 recognize this, that this was the plan that the General
25 Assembly enacted after the *Shaw* case?

1 A I know that this is a plan that was adopted. I don't know
2 whether this is the plan that was adopted after the *Shaw* case.
3 I mean, my problem is I was not involved in the litigation. I
4 mean, I was running in these districts after the cases were
5 decided, after the districts were drawn, but I was not actively
6 involved in the drawing of any of the districts.

7 Q All right. But do you recall running in a district that
8 looked like this in --

9 A Yes --

10 Q -- the 2000 general election?

11 A Yes, I do recall that.

12 Q Okay. And is it fair to say that in this district,
13 you're -- the 12th District in this case does not go into Union
14 County? Is that fair to say?

15 A Does it go into Union County? No, it has never gone into
16 Union County that I'm aware of.

17 Q Okay. And it didn't go into Cabarrus County, either; did
18 it?

19 A No.

20 Q And the 8th Congressional District in this plan did not go
21 into Mecklenburg County; is that correct? This '97
22 House/Senate Plan A, the 8th District does not go into
23 Mecklenburg County?

24 A The 8th District is the -- is what's in blue. It appears
25 to go into Mecklenburg County, but I may be misreading.

1 Q I think that's the 9th District. I think the color is
2 blending.

3 A Oh, okay. I see what you're saying. So what color is the
4 8th District? I'm not sure.

5 Q It's the light blue.

6 A It's what?

7 Q The light blue. It's in Union County, in Catawba, and
8 Stanly, and Hanson, and so forth.

9 A Okay.

10 Q So that -- the 12th District didn't go into Cabarrus
11 County under this plan?

12 A I'm sorry? Would you --

13 Q The 12th District was not pushed into Cabarrus County --

14 A That's correct, yes, not in this plan, right.

15 Q -- in this plan? And the 8th District was not pushed into
16 Mecklenburg County?

17 A Based on what you say, yes --

18 Q Okay.

19 A -- that appears to be correct.

20 Q Now, turning to Tab 4, did you ever run in the 12th
21 District as a representative by this plan?

22 A I don't know the answer to that. I ran in a 12th District
23 that appeared similar to this, but I don't know whether it was
24 this plan or not, to be quite honest.

25 Q All right. Did you -- the district that you talked about

1 where you won with 55 percent of the vote.

2 A Is that this district?

3 Q That's what I'm going to ask you.

4 A Okay.

5 Q I think it is. I think it is. I want to know --

6 A I don't know, because I can't look at a map like this and
7 really tell what's included. I mean, there's not enough
8 detail. This is just a picture. So I'll take your word that
9 this is the -- this is the district that drew the minority
10 percentage down to -- but, I mean, you're asking me to testify
11 about it, and I don't know the answer to that.

12 Q Okay. You ran one time in a district that had a minority
13 population in the 30 percent range?

14 A That's correct.

15 Q Was that in 1998?

16 A That's correct.

17 Q And then, that district went away and you never had an
18 election in that again?

19 A That's correct.

20 Q In 2000, is it not true that you -- your district that you
21 ran in was the one that is represented under Tab 3, the '97
22 House/Senate Plan A.

23 A I'm not trying to avoid your question. I just can't look
24 at these maps and tell you for certain that what you're saying
25 is correct. I mean, I don't have any reason to dispute what

1 you're saying, but I suppose you're not testifying. So, you're
2 trying to get me to confirm it, and I don't have the ability to
3 do that based on looking solely at these -- at the map.

4 Q Okay. Well, do you recall the counties that your district
5 was in?

6 A Yes.

7 Q And so, in the 2000 election, what counties was your
8 district in?

9 A Part of Mecklenburg. Is that Tab 3?

10 Q I'm looking at the 2000 election, which we're looking at
11 Tab 3.

12 A Okay. According to this map, it would be Mecklenburg --
13 part of Mecklenburg, part of Iredell, part of Rowan, part of
14 Davidson, and part of Forsyth, and part of Guilford.

15 Q Okay. And then, if you turn to Tab 5, do you recall
16 whether or not Guilford County was in the district that you ran
17 in in '98?

18 MR. SPEAS: Your Honor, I object to this line of
19 questioning. Mr. Farr has lots of witnesses over there who can
20 testify from their own knowledge about what map is what. This
21 witness simply does not have that information.

22 And I think what we've got here is Mr. Farr is
23 testifying, not the witness, so I object to this.

24 THE COURT: I can sort through what's comments by
25 counsel and what Senator Watt is testifying to. But in terms

1 of the substantive objection, response? Any response?

2 MR. FARR: Well, your Honor, he testified at length
3 about all the elections that he ran in from '92 to 2010 in this
4 district, so I think it's fair game for me to ask him about the
5 districts he ran in.

6 THE COURT: All right. I'm going to overrule the
7 objection and allow the question to continue. Now, I
8 understand your issue in terms of if he doesn't identify the --
9 or doesn't know what the map is, a lot of colloquy from counsel
10 about what it is may not advance things. But in terms of
11 asking him about the districts in which he ran, I think this is
12 fair, and I'll overrule.

13 Do you remember what the question was?

14 THE WITNESS: No, sir.

15 THE COURT: I didn't.

16 MR. FARR: I don't, either, Your Honor, so I'll start
17 with another one.

18 THE COURT: Let's start back over. I think you were
19 moving --

20 BY MR. FARR:

21 Q Actually, what I want to do now is I want to turn to the
22 Congressional Zero Deviation Plan which is under Tab 5, and may
23 I go to my exhibit now, Your Honor?

24 So Congressman Watt, Tab 5 is the plan that was
25 enacted in 2001 that you -- the 12th District that you ran in

1 was in the Congress Zero Deviation Plan?

2 THE COURT: You're welcome to stand there, Mr. Farr,
3 but when you move away from the microphone, you need to raise
4 your voice.

5 MR. FARR: Okay.

6 THE COURT: If you could ask that question again.

7 THE WITNESS: I have to take your word for it. I
8 can't -- I mean, I can't look at this map and tell you that it
9 is or is not the map that was passed. I mean, but if you say
10 it is, I don't have any reason to dispute that.

11 BY MR. FARR:

12 Q Okay. Do you recall what county your 2001 district was
13 located in?

14 A Part of Mecklenburg, part of Cabarrus, part of Rowan, part
15 of Davidson, part of Forsyth, and part of Guilford.

16 Q And looking at this map, you see the light blue that's the
17 8th District on this exhibit over here, Congressman Watt?

18 A Yes.

19 Q Okay. Now, I think we looked at the map. The map seemed
20 to indicate that the 8th District was not in Mecklenburg County
21 under the 97 Plan, and this map seems to indicate it was pushed
22 into Mecklenburg County under the 2001 Plan. Do you know why
23 that happened?

24 A I don't have any idea.

25 Q Okay. Now, in 2000, was there a Republican incumbent

1 elected from the 8th District named Robin Hayes?

2 A I served with Robin Hayes. I'm not sure which years he
3 served.

4 Q And during the 2000 era, was he not defeated in District 8
5 by Congressman Kissell?

6 A He was defeated by Congressman Kissell at some point, yes.

7 Q Okay. And let's look at Congressional District 13. We
8 got a new Congressional District in 2001; is that correct?

9 A That's correct.

10 Q And do you recall who the Chairman of the Senate
11 Redistricting Committee was in 2001?

12 A I understand there was Representative Brad Miller, but I
13 mean, I didn't know that at the time.

14 Q So he was the Chairman of the Senate Redistricting
15 Committee in 2001?

16 A That's what I understand, yes.

17 Q And he played a role, then, in drawing District 13?

18 A I don't know the answer to that. I assume he did if he
19 was chair of the committee.

20 Q Okay. And District 13 runs from Raleigh and goes up
21 through Randall County, Pearson, Caswell, and then this arm
22 that reaches down into Alamance County; do you see that?

23 A Yes.

24 Q And then it goes over to Pearson, splits Pearson, and then
25 kind of squiggles down into Greensboro; do you see that?

1 A Yes, I see it on the map.

2 Q Okay. Do you recall, in Greensboro, what happened to your
3 97th District, the district you ran in in 2000, how did that
4 change in Greensboro under this Congressional Zero Deviation
5 Plan?

6 A Some of the precincts on the northern -- the most northern
7 end of the district went out of my Congressional District and
8 into the 13th District.

9 Q Right, and those were pretty heavily Democratic precincts?

10 A I assume they were. Greensboro is pretty heavily
11 Democratic in most of the precincts.

12 Q And do you know the racial composition of the precincts
13 that were taken out of your '97 version of the 12th District
14 and put in the 2001 version of District 13?

15 A I probably did at some point, but I don't -- I don't have
16 a recollection of what they were.

17 Q All right. And from 2002 through 2010, who was elected to
18 District 13?

19 A Brad Miller.

20 Q Right, the guy who was the Chairman of the Senate
21 Redistricting Committee; is that right?

22 A Well, he was, yeah, I guess. Yeah.

23 Q Before I leave, let's put up -- just to make this point.
24 So, Congressman Watt, this is a blowup of the 2011
25 Congressional Plan. And there's a copy of it, I believe, in

1 Tab 12 of the notebook that I've given you, and I just have a
2 couple of questions about this. Now --

3 A Is this the one that was approved finally?

4 Q It is.

5 A Okay.

6 Q You say you met with Senator Rucho twice?

7 A Yes.

8 Q The first time you met with him was in where?

9 A In Raleigh at the state legislative building.

10 Q All right. And do you recall someone named Brent Woodcox.

11 A I don't recall. I know there was a staff person in the
12 meeting. Is that who you're talking about?

13 Q Yes.

14 A I know -- I never got his name, I don't think.

15 Q Yes, sir. And during that meeting -- excuse me for that.
16 I didn't mean to hit you with the spotlight here. During that
17 meeting, did you ask the staff person to stop taking notes of
18 the meeting?

19 A I don't recall that I did. I don't believe I did.

20 Q Okay.

21 A I don't know how I would have had any authority over
22 Senator Rucho's staff person.

23 Q Okay. So you don't recall telling this staff person that
24 you didn't want him to take notes in the meeting?

25 A I don't recall it, but, you know, in context, this was a

1 meeting of friends, so I wasn't sure exactly what purpose even
2 having staff people there was. But I don't recall giving him
3 any such instruction, no.

4 Q All right. Now, Congressman Watt, I think -- do you
5 recall that back in the days of *Shaw*, there had a been
6 suggestion from the Justice Department that the 2nd
7 majority-black District should start in Charlotte and run to
8 the east? Do you remember your testimony on that?

9 A You mean my testimony today on that?

10 Q Yeah, we talked about that.

11 A I don't think I've testified about that because I don't
12 have any real knowledge of that district.

13 Q Okay. Did you recall that the Justice Department had made
14 an objection?

15 A Yes, I do remember they made an objection and said draw a
16 second voting rights district.

17 Q All right. And did you -- at the time, did you talk to
18 any of the congressmen that were in office right at that point
19 in time to discuss the political impact on the incumbent
20 Democratic congressman if districts had been drawn from
21 Charlotte all the way to Wilmington?

22 A I don't recall having any conversations with anybody along
23 those lines. I recall having some conversations with some
24 people that suggested that running a district from Charlotte,
25 an urban city, through -- down 74 would not create any district

1 that had any sensibilities to it. And I thought and I've
2 expressed on a number of occasions that the urbanness of the
3 12th Congressional District was one of the -- one of the
4 defining criteria that was important.

5 That's where you had all of your historically black
6 colleges and universities. That's where you had urban
7 residents in Charlotte, Greensboro, Winston-Salem, all the way
8 up to Durham, so -- but I don't recall having any discussion
9 with anybody about the politics of what impact it would have
10 politically.

11 Q Okay. In your discussions with Senator Rucho, was there
12 any discussion about -- in 2011, the possibility of drawing
13 your district from Charlotte right up to the east? Did that
14 ever come up in your meetings with Senator Rucho?

15 A I don't recall that it did, but if it did, I probably
16 would have suggested the same thing that I suggested a number
17 of times before, that running a district in that way would just
18 not make any sense in terms of cohesiveness of the district.

19 Q Okay. And do you recall having any discussion with
20 Senator Rucho about whether or not native Americans in the
21 Robeson County area would be cohesive with African-Americans in
22 Mecklenburg if a district was drawn in that direction?

23 A I recall having a discussion with him about Representative
24 McIntyre's representation of native Americans and
25 African-Americans, and -- let me see how I can put this

1 politely. I thought that Representative McIntyre missed a
2 number of opportunities to coalesce African-American voters and
3 native American voters into a single bloc as opposed to
4 dividing them constantly on a number of issues.

5 I don't recall any other conversation, and it
6 certainly wasn't in the context of them being in the 12th
7 Congressional District.

8 Q Okay. All right. Now, I'll put this back up for a
9 second. This is the 2001 Plan Congressional Zero Deviation?

10 A Which tab is that?

11 Q I can't remember. It might be 6. There's two tabs for
12 Congressional Zero Deviation.

13 THE COURT: Try 5.

14 MR. FARR: Five, I believe, is the 2000 Census --

15 THE COURT: Five and six.

16 MR. FARR: -- and 6 is the 2010 Census.

17 THE COURT: All right.

18 THE WITNESS: So I'm looking at 6, that's what this
19 is?

20 MR. FARR: Yeah.

21 THE WITNESS: Okay.

22 BY MR. FARR:

23 Q So I just wanted to ask you this question. The folks in
24 Guilford County that were in the 13th District, do you know
25 whether any of those voters had previously been in your 12th

1 District?

2 A I'm pretty sure some of them were, yes.

3 Q Okay. And so, under the 2001 plan, they were in the
4 13th District. Would you agree that was a strong Democratic
5 district for Congressman Miller?

6 A You know, I never really looked that closely at
7 Congressman Miller's district. I knew that it was making my
8 travel time shorter because it was making -- it was taking the
9 most northern part of my Congressional District out. And by
10 that time, I accepted the notion that it was better to have
11 more compactness, because while I started out advocating that
12 it was fine to go all the way to Durham, I also knew that my
13 experience was that it put a lot of miles on your car and a lot
14 of miles on your body to travel that distance to represent
15 people.

16 Q Okay. Did you have any discussions with Senator Rucho
17 about Section 5 and how that applied to voters in Guilford
18 County?

19 A I told him I understood that Greensboro -- that Guilford
20 County was a Section 5 district, and that I thought that to
21 retrogress might be a problem legally, but I also made it clear
22 to him that to ramp up the percentage of African-Americans was
23 not required based on my understanding of what the Voting
24 Rights Act and the case law was saying.

25 Q Did you ever say that you thought there would be a

1 Section 5 objection if the new plan didn't take care of the
2 voters in Guilford County?

3 A I think I said that there might be a problem if he
4 retrogressed from the percentages that existed. But I also was
5 very clear that increasing the minority percentage in this
6 district was just bordering on insanity, because, as I told
7 him, you know, I'm getting 65 percent of the vote. You're
8 going to give me a district in which I get 80 percent or more
9 of the vote, and that's not justified nor mandated by the
10 Voting Rights Act.

11 Q Okay. But isn't it true you -- you testified at trial,
12 Congressman Watt, you stated that you know a little bit about
13 Section 5; do you recall that?

14 A Yes, I do.

15 Q And are there ever any Section 5 objections raised when
16 the black community is fractured into different districts?

17 A I don't know the answer to that question. I know
18 something about Section 5, but I don't know whether -- every
19 objection that might get raised.

20 Q Okay. Now, looking at that Congress Zero Deviation, it
21 starts in Mecklenburg, it goes to Rowan, Davidson, Forsyth, and
22 Guilford County; correct?

23 A Yeah. You skipped over Cabarrus.

24 Q I skipped Cabarrus, that's right. So that's six counties;
25 correct?

1 A Yes.

2 Q And they're all divided?

3 A Yes.

4 Q There's not a single whole county in that district?

5 A That's correct. There never has been a single whole
6 county in the 12th Congressional District throughout its entire
7 history. Well, actually, I take that back. There was one
8 iteration where -- that I saw, I'm not sure I ever ran in that,
9 where all of Rowan County was in the 12th Congressional
10 District.

11 Q But the ones that were enacted were based on divided
12 counties?

13 A I can't remember whether I ran in that or whether it was
14 just a proposal that never got passed.

15 Q All right. Well, if it's a whole county, if there was a
16 whole county in one of these districts you ran in, it would be
17 the 98th District, and we've gone over that map, and I won't do
18 that again.

19 But what I want to do now is this is the 2011 plan.
20 And this plan is -- this is one that was enacted in 2011, and
21 it's in a portion of Mecklenburg, Cabarrus, Rowan, Davidson,
22 Forsyth, and Guilford; is that correct?

23 A Which tab is it?

24 Q This would be 12.

25 A Twelve. Yes, that's the same six counties -- parts of the

1 same six counties, but I assume a different configuration.

2 Q Okay. But the 2011 12th District is in portions of the
3 same six counties --

4 A That's correct.

5 Q -- that were included in the 97th District in which you
6 ran in the 2000 election?

7 A That's correct.

8 Q Now, Congressman Watt, when you met with Senator Rucho on
9 April 25th with the staff person, did he tell you he was going
10 to do what you asked him to do?

11 A No, he didn't, but he seemed receptive to what I was
12 suggesting.

13 Q So he was friendly?

14 A Yes. Well, he's always been friendly. I mean --

15 Q But he never said he was going to do what you requested?

16 A That's correct.

17 Q And did you have any discussions with him about how your
18 district related to the other districts that adjoined the 12th
19 District?

20 A No. I mean, obviously, if you move precincts, it's going
21 to have some impact, but my suggestion was a minimal degree of
22 change which would result in minimal impact on the surrounding
23 districts.

24 Q So minimal change would have resulted in the 8th District
25 remaining in Mecklenburg County?

1 A I don't know, because I was looking at it from the 12th
2 Congressional District, and what I was suggesting to him was
3 how he could minimally change the 12th Congressional District.
4 I wasn't having discussions with him about the 8th or other
5 Congressional Districts. I mean, I knew it would have some
6 impact, but we were not at that level of detail.

7 Q Okay. So you had no discussions with Senator Rucho about
8 the political impact of how District 12 would be drawn in 2011
9 on other Congressional Districts?

10 A I can't swear that I didn't have some discussion with him
11 about political impact. I recall saying to him that my
12 impression was that members of the delegation were happy with
13 their general districts and were not lobbying to change
14 substantially. That would be a political statement of sorts.
15 But I don't think I was in a position to really talk about much
16 other than the 12th Congressional District, which is what I
17 thought the meeting was designed to talk about.

18 Q Okay. I want to ask you about your meeting with Senator
19 Rucho in -- at his house.

20 THE COURT: Let me ask you a question. How much
21 longer do you have with this witness on cross, Mr. Farr?

22 MR. FARR: I would say 15, 20 minutes.

23 THE COURT: This is a good point, I think, to take a
24 lunch recess.

25 MR. SPEAS: Your Honor, Congressman Watt has some

1 plans and obligations. If we could finish before lunch, it
2 would be very helpful.

3 THE COURT: All right. We'll continue. Let's move
4 it along.

5 MR. FARR: All right. Thank you, Your Honor.

6 BY MR. FARR:

7 Q So, Congressman Watt, when you met with Senator Rucho at
8 his house, when was that again?

9 A It was a month or two after the meeting in Raleigh. I
10 didn't have -- I don't have a specific date for it, but I think
11 it was in June.

12 Q Okay. Was anyone else present for that meeting?

13 A Senator Rucho's wife came in briefly, and Representative
14 Samuelson was there for a part of the meeting.

15 Q Was Representative Samuelson there when you arrived?

16 A I think she was, but I'm not positive.

17 Q Was she there at the time you left?

18 A I'm not positive of that, either, but I think most of the
19 conversations I had with Senator Rucho, I got the impression he
20 wasn't trying to have it in front of Representative Samuelson
21 because he was embarrassed that he was being called on to do
22 something that he didn't appear to be comfortable with.

23 Q All right. So what room did you meet Senator Rucho in his
24 house?

25 A In his kitchen.

1 Q And was --

2 A We stood around. I mean, he had he donuts and coffee, and
3 we stood around a little island in his kitchen.

4 Q And did you go to any other room during the time you were
5 there?

6 A I think he may have taken me on a tour of parts of his
7 house, but we didn't -- I don't think we met in those rooms.

8 Q When he took you on a tour of his house, did you have any
9 discussion about redistricting, or did that occur in the
10 kitchen?

11 A You're taxing my memory to a point that I couldn't swear
12 to it, to be quite honest.

13 Q All right. So was the discussion that you've testified
14 about, did that occur in the kitchen, about ramping up the
15 district?

16 A You know, I have searched my mind because my recollection
17 is that it actually occurred as we were leaving. And Senator
18 Rucho appeared to want to show me the way back out of his
19 community and used that as an excuse to go out front. And my
20 recollection is that that's where the conversation -- there
21 wasn't much discussion about congressional redistricting in
22 this meeting. I mean, I can't -- one of the things that
23 surprised me was that he would call me at home on a weekend,
24 ask me to meet with him. I thought he was going to show me
25 maps.

1 There were no maps. And he appeared not very
2 comfortable having much discussion in front of Representative
3 Samuelson. I'm not even sure how she got to the meeting. I
4 didn't know she was coming to the meeting.

5 But at some point, he told me that his leadership had
6 told him that they were going to ramp -- or he must ramp up
7 these districts to over 50 percent African-American, both the
8 1st and the 12th, and that it was going to be his job to go and
9 convince the African-American community that that made sense.

10 And I said, Bob, that's just -- you're not going to
11 be able to do that, and I'm not going to be able to support you
12 if you do that because I know that it does not make sense. And
13 so, it is not required by the Voting Rights Act, it's not
14 mandated, it's not justified. And for you to say that you're
15 going to go and try to convince the black community that this
16 is in their interest is just not going to fly, and I'm not
17 going to sit idly by and say that this makes sense because I
18 don't think it makes sense.

19 Q So you said you wouldn't sit idly by?

20 A Well, I don't know if I used those exact words, but I
21 mean, you know, the essence of what I was saying was, look, I'm
22 not going to support you if you go out and say that this is in
23 the interests of the African-American community because I don't
24 think it is.

25 Q All right. Now, do you know for sure where that

1 conversation took place?

2 A I don't know for sure where that conversation took place.
3 I've already testified about that.

4 Q And do you know for sure whether or not Representative
5 Samuelson was present when the conversation --

6 A I don't think she was present when that conversation took
7 place, no.

8 Q You can remember she's not present, but you can't remember
9 where the conversation took place?

10 A Well, I can remember -- I can remember that I believed
11 that she was not present because it appeared to me that Bob was
12 going out of his way not to have her present. It seemed to me
13 that she was -- she invited herself to that meeting, it
14 appeared to me.

15 Now, you know, that's -- I can't swear to that,
16 either, but it did not appear to me that he was interested in
17 having this conversation in front of her.

18 Q So, Congressman Watt, you were the first person to serve
19 in the 12th District, and you've testified that you were
20 familiar with the *Shaw* litigation and the *Cromartie* case;
21 correct?

22 A Yes, generally.

23 Q Right. And you're aware that in a case like this, if the
24 plaintiff proves that race is the predominant motive, that the
25 district's subject to a more heightened level of scrutiny than

1 if race is not the predominant motive? Don't you understand
2 that?

3 A I think that there's some case law to that effect, yes.

4 Q Okay. And you were against a district that would draw the
5 black population above 50 percent in your district; correct?

6 A Wasn't so much that I was against it. I mean, from my
7 electoral advantage, it would've been a much, much easier
8 district to run in. But, you know, I just participated in the
9 judiciary committee, in reauthorizing the Voting Rights Act,
10 and I knew that the Voting Rights Act didn't stand for what he
11 was suggesting he was planning to do.

12 Q Okay. That's your understanding of the Voting Rights Act?

13 A Beg your pardon?

14 Q That's your understanding of the Voting Rights Act, and
15 you thought what Senator Rucho wanted to do violated your
16 understanding of the Voting Rights Act?

17 A That's correct, yes.

18 Q Okay.

19 MR. FARR: Now, may I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 MR. FARR: I have some exhibits I'd like to hand up
23 to the Court.

24 BY MR. FARR:

25 Q Now, Congressman Watt, I've handed you Defendant's

1 Exhibit 28. Do you remember this exhibit?

2 A Yes.

3 Q Was this a statement that you prepared?

4 A I did, yes.

5 Q And did you send this to Senator Graham to have him read
6 this at a committee hearing?

7 A I did, yes.

8 Q And so, this statement was prepared after you had your
9 meeting with Senator Rucho at his house?

10 A That's correct.

11 Q And, by the way, when you say the 12th District is drawn
12 over 50 percent, what census category are you relying on?

13 A I'm sorry, would you repeat that?

14 Q Do you know the different types of census categories for
15 African-Americans?

16 A I don't, no.

17 Q Okay. Now -- so this was a statement that you prepared to
18 have Senator Graham read at a committee hearing, and this was
19 prepared after you had told Senator Rucho that drawing your
20 district over 50 percent did not comply with the Voting Rights
21 Act; correct?

22 A That's correct.

23 Q And your understanding was that if Senator Rucho intended
24 to draw the district over 50 percent, that could be used as
25 evidence that race was the predominant motive for Congressional

1 District 12; is that correct?

2 A I don't know that I ever thought about it in that context
3 until you suggested it, but it probably would be, but that
4 didn't have anything to do with what I was doing.

5 Q All right. Now, in reading Defendant's Exhibit 28, which
6 was going to be read to the General Assembly pursuant to your
7 instructions, is there anything in this statement that you
8 prepared, Congressman Watt, disclosing this conversation you
9 say you had with Senator Rucho where he told you that
10 leadership was requiring him to ramp up the district over
11 50 percent?

12 A No.

13 Q And don't you think that would have been important
14 information for the General Assembly to have?

15 A Well --

16 Q Just yes or no, and then you can explain.

17 A It probably would be important information. But these
18 statements, until Senator Rucho started talking about them
19 publicly, I was treating as confidential conversations between
20 me and Senator Rucho. When he started to misrepresent what I
21 had said publicly, then that's when I started to say there's
22 some sinister motivations taking place here, so the answer to
23 your question is, no, it's not in here, but in a subsequent
24 letter, I put that in context. The idea that it was read on
25 the floor of the legislature puts it in context.

1 Q Okay. We'll get to that in a second, Congressman Watt.

2 But -- so this statement was designed to refute public
3 statements by Senator Rucho that she thought he had
4 misrepresented what she had said; is that correct?

5 A Yes.

6 Q Did Senator Rucho ever make a public statement saying that
7 you were the person who was responsible for drawing the
8 district over 50 percent?

9 A I think there are public statements that imply that, yes.

10 Q Not imply it. Did he ever say it? Did he ever say --

11 A I mean, I -- the last thing I'm going to do is go and look
12 at every statement that Senator Rucho has made on this subject.
13 I mean, that's just not something I --

14 Q Have you ever seen the statement by Senator Rucho where he
15 stated that he drew the district up over 50 percent because you
16 wanted it that way?

17 A I've seen a statement where he was very close to saying
18 that, yes.

19 Q What do you mean by "very close"?

20 A Well, he was making it sound like this was my idea to ramp
21 these minority percentages up, and I just knew that that was
22 not the case.

23 Q Do you have a copy of that statement?

24 A I'm sure -- I'm sure I would somewhere, but I don't have
25 it here on the witness stand with me.

1 Q Okay.

2 A I think if you read some of the exhibits where public
3 statements were being made, they were making it sound like,
4 somehow, this was my idea and Representative Butterfield's
5 idea, and I just thought that was a ludicrous thing to suggest.

6 Q Okay.

7 A Because I knew it wasn't my idea, and I didn't think it
8 was Representative Butterfield's idea, either.

9 Q All right, Congressman Watt, looking, again, at
10 Defendant's Exhibit 28, you wrote this to correct the record
11 for misrepresentations that you thought Senator Rucho made; is
12 that right?

13 A Yes.

14 Q Okay.

15 A That's what the first paragraph says. I wish to submit
16 this statement for the public record to provide additional
17 context to the selective and misleading characterizations of my
18 opinions that the chairs of North Carolina's Legislative
19 Redistricting Panel have entered into the record.

20 Q Okay.

21 A Yes.

22 Q And in this exhibit, you do not make -- you do not say in
23 this exhibit that Senator Rucho had publicly stated incorrectly
24 that you were the person responsible for having the district
25 drawn over 50 percent?

1 A Well --

2 Q Is that yes or a no, and then you can explain your answer.

3 A No, I do not -- well, I do say that because when I say to
4 provide additional context to the selective and misleading
5 characterizations of my opinions, what I'm saying is that he
6 has misrepresented what I've said. And to the extent that he
7 is either saying or implying that it was my idea to ramp these
8 districts up to 50 percent, he's just -- he's just out and out
9 not telling the truth.

10 Q Okay. But you give -- you give -- in this statement, you
11 give specific examples of statements you thought Senator Rucho
12 had misrepresented what you told him; right? Aren't there some
13 specific examples in this statement?

14 A The next to the last paragraph says, the chairs are
15 incorrect in implying that I, at any time, endorse their
16 configuration, which shifts large numbers of precincts in and
17 out of the 12th District in an apparent effort to increase the
18 African-American population in the district. If Senator Rucho
19 and Representative Lewis were really interested in
20 accommodating my preference by agreeing to model the new 12th
21 District after the current 12th District, as they profess on
22 page 5 of their July 1, 2011, statement, shifting four
23 precincts rather than the substantial number of precincts the
24 2011 plan proposes to shift would have been much more
25 accommodating as well as much more consistent with the criteria

1 they outlined.

2 I don't know how I can be anymore direct in
3 counteracting what they were doing.

4 Q But you don't say in here that Senator Rucho has
5 misrepresented that I was the one who asked for the district to
6 be drawn over 50 percent. That's not in here; is it?

7 A The first paragraph says that they've taken out of context
8 and selectively misused the characterizations of my -- of what
9 I told him. I don't know what else I can tell you on that,
10 sir.

11 Q I don't know what else you can tell me, either,
12 Congressman Watt.

13 MR. FARR: May I approach the witness?

14 THE COURT: You may.

15 BY MR. FARR:

16 Q Congressman Watt, I've handed you Defense Exhibit 27. Do
17 you have that in front of you?

18 A Yes, sir.

19 Q And is that a letter you prepared?

20 A It is, yes.

21 Q That's dated July 8?

22 A Yes.

23 Q And it's addressed to who?

24 A Oh, I'm sorry, to senator Rucho and Representative Lewis,
25 and copied to a number of people in the state legislature.

1 Q Okay. And the people who received the copies of this
2 letter were members of the Legislative Black Caucus?

3 A Yes.

4 Q And I see Senator Blue got a copy of this letter?

5 A Yes.

6 Q And this letter was prepared after your meeting with
7 Senator Rucho and Representative Samuelson at Senator Rucho's
8 house?

9 A Yes.

10 Q In this letter, did you report that Senator Rucho had told
11 you that he'd been ordered by leadership to ramp up the black
12 percentage in the district to over 50 percent?

13 A I didn't specifically mention that, no.

14 Q Okay. And did you state in this letter that Senator Rucho
15 had falsely or incorrectly stated publicly that it was your
16 idea to draw the district over 50 percent?

17 A Well, the second sentence says, I'm writing to correct
18 statements that you attributed to me in Claim 2 of the
19 statement that you earlier misconstrued or misrepresented.

20 Q And then, in the bottom part, the first page, you list
21 some of the things that you claim Senator Rucho didn't state
22 correctly; right?

23 A Some of them, yes.

24 Q Okay. And in the part of this letter where you gave the
25 list of the items that Senator Rucho had inappropriately

1 attributed to you, you did not say that Senator Rucho had
2 stated publicly that you were the person who wanted the
3 district ramped up over 50 percent.

4 A I'm sorry. Would you repeat the question? I'm trying to
5 read -- read what I said --

6 Q Okay, sure. Sure.

7 A -- because I haven't seen it in a while.

8 Q In that letter, you've got a list of items that you are
9 telling Senator Rucho and Representative Lewis, and two, four,
10 six, seven members of the Legislative Black Caucus, you've got
11 a list of items that you claim that Senator Rucho had
12 misrepresented as far as what you'd said to him; correct?

13 A Yes.

14 Q And the list of items that you have in this letter about
15 what Senator Rucho publicly misrepresented does not include a
16 statement by Senator Rucho where he had publicly said you were
17 the person responsible or in favor of drawing the district over
18 50 percent?

19 A That's correct, but of course, this is responding to Claim
20 2 of a particular statement, which is what the letter was
21 intended to do.

22 Q Okay. And I'm looking at the notebook that Mr. Speas gave
23 you, this white notebook that doesn't have an exhibit sticker
24 yet. And in that notebook, under Tab 30, there's a document
25 listed as Defendant's Exhibit 30. Could you find that?

1 A I have it, yes. That's the floor statement.

2 Q Yes, sir.

3 A Yes.

4 Q Tell us again what this was.

5 A Beg your pardon?

6 Q This was a statement that you prepared?

7 A It was the statement that was read into the record at --
8 in the legislative session by Senator Graham, yes --

9 Q Okay.

10 A -- that starting at page -- I guess --

11 Q I'm on 37 --

12 A -- 37.

13 Q -- is where I think it starts.

14 A Do I have the right statement? Maybe that's Congressman
15 Butterfield's statement.

16 MR. FARR: May I assist the witness, Your Honor?

17 THE COURT: You may.

18 THE WITNESS: Yes. Starting at page 37 is the letter
19 that I -- or statement I submitted.

20 BY MR. FARR:

21 Q Now, this statement was read during the session where the
22 redistricting plans were actually enacted?

23 A I don't know that I can verify that, but I understood it
24 was read on the floor during part of the debate, yes.

25 Q Okay. If you turn -- don't lose your place on 37, but if

1 you turn to the front of that Exhibit 30, this indicates it's a
2 transcript that was prepared on July 25, 2011 --

3 A Yes.

4 Q -- is that right?

5 A Yes, I see that.

6 Q Okay. So you had prepared a statement that you asked
7 Senator Graham to read for you at a session of the legislature
8 on July 25, 2011; is that right?

9 A Yes.

10 Q Okay. Now, at the time that you wrote this statement, had
11 you had any discussions about how the politics of the proposed
12 plan would change the Congressional Districts? Had anyone
13 talked to you about that?

14 A I don't remember having any specific conversations about
15 any political consequences of any of these things.

16 Q So you never had anyone tell you that this new plan was a
17 Republican gerrymander?

18 A I don't recall anybody telling me that. Maybe if you told
19 me who you were talking about telling me, that might jog my
20 memory.

21 Q Okay. Now, when you submitted this statement, you knew
22 your district was going to be drawn over 50 percent in at least
23 one census category?

24 A I knew that that's what they were proposing. It had not
25 been adopted.

1 Q Okay.

2 A And I was trying to express my opinion that it should not
3 be adopted.

4 Q So you were -- you would have favored not adopting the
5 plan that was ultimately adopted?

6 A That's -- yes, I think that's correct. I would have
7 favored not adopting it, yes.

8 Q Okay. And this statement that was read on July 25th
9 during the legislative session that you prepared, anywhere in
10 this statement do you report your conversation with Senator
11 Rucho where he told you that his leadership had ordered him to
12 ramp your black percentage in your district over 50 percent?

13 A Probably not.

14 Q And anywhere in the statement that you prepared, did
15 you -- that was read on July 25th, did you state that Senator
16 Rucho had publicly misrepresented that you were the person
17 responsible for ramping the district up over 50 percent?

18 A Well, I've already been on record a couple of times about
19 that already. I don't know whether there's -- I mean, without
20 going through and reading it again, I haven't looked at this in
21 quite a while, but I don't know the answer to your question
22 without going all the way through the statement and reading.

23 Q Well, please do so, because it's only three pages.

24 A At the bottom of page 37, I say, and I want to make it
25 clear that my statement -- any statement or implication that

1 either plan was drawn to accommodate the wishes that I
2 expressed is inaccurate and untrue.

3 Q Okay. Anything else?

4 A In the middle of page 39, I say, to maintain as a joint
5 statement of Senator Rucho and Representative David --
6 Representative Lewis regarding the release of the Rucho-Lewis
7 Congress 2 does, that maintaining the 12th District as a very
8 strong Democratic district will make adjoining districts more
9 competitive for Republican candidates is seriously in error.

10 So, yeah, there were a couple of places where I took
11 issue with what he was saying. But if you're asking did I --
12 did I try to embarrass Senator Rucho publicly, the answer is
13 no.

14 Q Okay. And I'm glad you pointed out that statement,
15 because I want to ask you some questions about that on page 39.
16 When you said that maintaining the 12th District as a very
17 strong Democratic district will make adjoining districts more
18 competitive for Republican candidates is seriously in error,
19 what did you mean by that?

20 A Well, if you pack all the black people into one
21 Congressional District, you'll make my election a lot easier,
22 and you'll make adjoining Republican elections a lot easier for
23 them. It won't make them more competitive. It won't make my
24 district more competitive, and it won't make their district
25 more competitive. It'll make both districts easier.

1 And for them to be representing to the public that
2 this was designed to make Congressional Districts more
3 competitive, which is what they had said in their statement,
4 was inaccurate.

5 Q Did they say more competitive or more competitive for
6 Republicans? You say here, more competitive for Republicans.

7 A Well, more competitive for Republicans. The flip side of
8 that coin is less competitive for Democrats. And more
9 competitive for Democrats is -- the flip side of that coin is
10 less competitive for Republicans. I don't know how you can --
11 I mean, they're opposite sides of the same coin. I'm not sure
12 what you're driving at.

13 Q But you agree that drawing the district the way your
14 district was drawn in 2011 benefited Republican candidates in
15 adjoining districts?

16 A Benefited me politically by making my district less
17 competitive. I would win at over 80 percent of the vote, which
18 I did, and it would make adjoining Republican districts less
19 competitive because they would -- they would find it easier to
20 win.

21 Q Okay. Well, what's -- well, I've got -- I'll finish up
22 with these questions, Congressman Watt, then I'll be done.

23 What about in 2010, Congressman Miller was a Democrat
24 and was elected in the 13th District. Does that jar with your
25 memory?

1 A Yeah, that's correct.

2 Q Okay. And in 2012, under the New Congressional Plan, was
3 Congressman Miller elected in the 13th District?

4 A I don't think he was, no.

5 Q And wasn't George Holding elected?

6 A That's correct.

7 Q And isn't he a Republican?

8 A That's correct.

9 Q And in the 8th District in 2010, which adjoins the
10 12th District -- in 2010, wasn't Congressman Kissell elected?

11 A That's correct.

12 Q And in 2012 under the 2011 Congressional Plan, Congressman
13 Kissell lost to a Republican?

14 A That's correct. And by taking black votes and packing
15 them into my Congressional District, he made all the districts
16 less competitive, yes. So I don't know how that's inconsistent
17 with what I've said.

18 Q So by drawing the district the way that they drew it, it
19 made many other districts more favorable for Republicans; is
20 that right?

21 A It probably did; less competitive.

22 MR. FARR: No further questions, Your Honor.

23 THE COURT: Redirect?

24 MR. SPEAS: Couple of very quick, clarifying
25 questions, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. SPEAS:

3 Q Congressman Watt, you were asked -- handed Exhibit J,
4 Defendant's Exhibit No. 27, which is your July 8, 2011, letter.
5 Do you have that?

6 A Yes.

7 Q And in that, do you refer to a statement made by Senator
8 Rucho and Representative Lewis regarding June 23's public
9 hearing in the first paragraph?

10 A Yes.

11 Q And in the third paragraph, do you refer to Claim 2 of
12 that letter or that public statement?

13 A That's correct.

14 MR. SPEAS: May I approach the witness quickly, Your
15 Honor?

16 BY MR. SPEAS:

17 Q Congressman Watt, I'm placing in front of you -- I'll try
18 to get the exhibit numbers right, Your Honor -- Defendant's
19 Exhibit D-5.1, which is the collection of public statements
20 issued by Senator Rucho and Representative Lewis. And I am
21 turning to --

22 THE COURT: Which tab, so we can find it?

23 MR. SPEAS: June 22, 2011, statement is entitled,
24 Statement by Representative Bob Rucho and Representative David
25 Lewis regarding proposed VRA exhibits.

1 Have you found that, Your Honor?

2 THE COURT: Just a second, let me catch up. June 22,
3 you said?

4 MR. SPEAS: It's Tab 5. It's the June 22, 2011,
5 statement. It's in the upper right-hand corner.

6 THE COURT: Okay. Handwritten up there --

7 MR. SPEAS: Handwritten.

8 THE COURT: -- 6-22? Okay.

9 BY MR. SPEAS:

10 Q Let me show you that, Representative Watt, and ask you if
11 you know whether a Congressional Plan had even been released
12 on -- as of that date, June 22, 2011?

13 A The question is, again, what?

14 Q Does that statement, the June 22 statement, concern only
15 the State House and State Senate Plans and not the
16 Congressional Plan?

17 MR. SPEAS: Your Honor, if I may approach the
18 witness.

19 THE COURT: You may.

20 BY MR. SPEAS:

21 Q Congressman, if you would look at the 96 document in this
22 ledger, it's the July 1 statement by Representative Lewis and
23 Senator Rucho. And it concerns relating to the Proposed
24 Congressional Plan; is that correct?

25 A That's what the title says, yes.

1 Q So, from that document, it appears that the Congressional
2 Plans weren't even made public until July 2011?

3 A I don't know the answer to that. I mean, I wasn't
4 tracking the timing of any of this. I'm sorry.

5 MR. SPEAS: Thank you very much. I don't have any
6 other questions.

7 MR. FARR: No questions, Your Honor.

8 THE COURT: All right. You may step down.

9 THE WITNESS: Do I leave these here?

10 MR. SPEAS: Please.

11 MR. SPEAS: Your Honors, Congressman Watt needs to
12 pursue other business. I assume he's able to.

13 THE COURT: Any objection to excusing Congressman
14 Watt?

15 MR. FARR: No, we're happy to excuse him.

16 THE COURT: All right. You may be excused. We'll
17 stand in luncheon recess until quarter to three.

18 (At 1:26 p.m., break taken.)

19 (At 2:47 p.m., break concluded.)

20 THE COURT: All right. Where are we? Are the
21 plaintiffs ready to proceed with their next witness?

22 MR. SPEAS: Yes, Your Honor. The plaintiffs would
23 call Representative Butterfield to the stand.

24 (Witness sworn by the clerk.)

25

1 G.K. BUTTERFIELD,

2 PLAINTIFF'S WITNESS SWORN AT 2:48 p.m.

3 DIRECT EXAMINATION

4 BY MR. SPEAS:

5 Q Would you state your name for the record, please.

6 A GK Butterfield. The G is for George, the K for Kenneth.

7 Q Would you tell the Court a little bit about where you grew
8 up and where you went to school?

9 A I'm a native of Wilson, North Carolina, born in 1947, and
10 went to the public schools there in my home community, both
11 elementary and high school. Graduated from high school in
12 1965.

13 During those years, I was very active in what we now
14 refer to as the Civil Rights Movement, as was my father before
15 me. After high school, I went on to North Carolina College at
16 Durham, later to become known as North Carolina Central
17 University.

18 After my third year in college, I was drafted into
19 the US Army. I served two years in the Army, discharged from
20 the Army in 1970, and returned to Durham to complete my
21 undergraduate work, and then went on to the law school there at
22 North Carolina Central University, graduating in 1974.

23 Did not pass the bar exam in 1974. I worked for a
24 law firm in Warren County called Clayton & Ballance. And the
25 following year, 1975, I took the bar exam and passed it and was

1 admitted to the practice of law.

2 Q Tell us a little bit about your legal career.

3 A Well, my legal career, in earnest, started in 1975, even
4 though I had one year working with a law firm prior to that as
5 a lawyer in a small town with another lawyer, lifelong friend
6 named Milton F. Fitch, Jr. now Superior Court Judge Fitch.

7 The two of us started -- and Quentin Sumner, who is
8 also a Superior Court Judge, we started a law firm known as
9 Fitch, Butterfield & Sumner. And we continued under that
10 arrangement for several years.

11 After that, Judge Sumner withdrew from the firm and
12 started his own firm with his spouse, and Milton Fitch and I
13 continued the law practice. And later, a man named James A.
14 Wynn, Jr. joined the law firm to be known as Fitch, Butterfield
15 & Wynn. I continued to practice law until I was elected to the
16 bench some years later.

17 Q Okay. And you served on the North Carolina Superior Court
18 bench?

19 A I did serve on the bench. Prior to getting elected as a
20 superior -- resident Superior Court Judge, I was a typical
21 small-town lawyer. In the early years, I handled the speeding
22 tickets and the misdemeanor district court cases and the like,
23 and then graduated and became a personal injury lawyer. And I
24 began to do some probate work, and enjoyed that very much.

25 And then, in 1982, the US Supreme Court changed

1 the -- what is required for a Section 2 violation from the
2 intent standard to the results, or effects, standard. And so I
3 developed an interest in voting rights litigation, primarily
4 because my father, in 1957, had become the victim of a
5 miscarriage of justice when he served on the Board of Aldermen
6 in my hometown.

7 While my family was on vacation in March of 1957, the
8 City Council abruptly changed the method of election from
9 district elections to at-large election. And my dad had been
10 the first African-American to serve on the board in its
11 history. And when we returned from our vacation, we found that
12 the method of election had been changed, and he was soundly
13 defeated in 1957. I was 10 years of age and remember it very
14 vividly. And there was a challenge to the election system.

15 Also, there was a provision enacted that prohibited
16 single-shot voting. So not only did it dissolve a district
17 election system, but it also created a requirement, a full
18 slate requirement which prevented single-shot voting. And that
19 really angered the African-American community, as you can
20 imagine.

21 In 1959, another gentleman in the community ran, my
22 pastor, and he was soundly defeated in 1959. And at that
23 point, the NAACP took the litigation. And the case went to the
24 US Supreme Court -- well, the Supreme Court denied cert in the
25 case, but it was lost at every level.

1 And so, as a young -- impressionable young man, I
2 noticed all of this and didn't quite fully understand it, but
3 that forced me to want to not only become a lawyer, but to go
4 into the political arena. And so, my law practice evolved into
5 a voting rights practice because I wanted to try to remedy some
6 of the past miscarriages of justice. So I did voting rights
7 litigation for some years.

8 The legislature created, as a result of litigation
9 under the Voting Rights Act, eight opportunity districts for
10 black lawyers to get elected to the Superior Court bench. It
11 was settled; it was not a verdict by the Court. It was settled
12 by the legislature, and eight seats were created -- eight
13 opportunities were created across the state. And I ran in one
14 of those districts in 1988 and was elected and sworn into
15 office as resident Superior Court Judge January 1st of 1989,
16 and served the next 11 years as a Superior Court Judge.

17 In 2001, Governor Easley appointed me to the State
18 Supreme Court. I. Beverly Lake, Jr., had defeated Chief
19 Justice Henry Frye in the election of 2000, thereby creating a
20 vacancy. When Lake moved from Seat 7 to Seat 1, there was a
21 vacancy in Seat No. 7, and Governor Easley, one of his first
22 acts as governor was to appoint me to the State Supreme Court.

23 I stayed on the Court for nearly two years, and I was
24 defeated in the November 2002 election because we, as you
25 certainly recall, had partisan election judges. And even

1 though my opponent was not known and did not do any
2 fundraising, did not do very much campaigning, he beat me by a
3 margin of 50 to 48 because of the straight ticket voting for
4 then candidate Elizabeth Dole.

5 And so, after serving nearly two years on the Supreme
6 Court, Governor Easley re-appointed me, this time as a Special
7 Superior Court Judge, and that's where I stayed until I was
8 elected to Congress.

9 Q And you first ran for Congress in 2004?

10 A I ran in 2004 in a Special Election. Around March of
11 2004, my predecessor in this office announced he was not
12 running for re-election, and then two weeks later announced
13 that he was actually vacating the seat. That created a vacancy
14 for the House. There had to be a Special Election under the
15 law, and Governor Easley set both the regular primary and the
16 election for the remainder of the term, two elections on the
17 same ballot on the same day. It was a little confusing. But I
18 was elected on July 20th of 2004 and continue in that position
19 today.

20 Q And you have been re-elected to Congress in 2006, 2008,
21 2010, 2012, and 2014?

22 A That is correct.

23 Q Okay. Tell the Court a little bit about your work in
24 Congress.

25 A Well, believe it or not, I'm now considered a senior

1 member of Congress. There's been a tremendous turnover in the
2 last 10 years. I went in as Member No. 435, and now I'm No.
3 140 in order of seniority in the House on the Democratic Side.
4 I am a Democrat. On the Democratic side, I am a Chief Deputy
5 Whip of the House Democratic Caucus, and I'm also honored to be
6 the chairman -- as was Congressman Mel Watt some years ago,
7 Chairman of the Congressional Black Caucus.

8 Q Okay. Now --

9 A And served on the Energy & Commerce Committee in the House
10 of Representatives.

11 Q Now, let's turn just a few minutes to the districts from
12 which you were elected prior to the 2011 redistricting that is
13 at issue here. Do you recall the approximate African-American
14 voting-age population in your district from 2004 through the
15 2010 election?

16 A It was in the 47 percent range, I believe.

17 Q Okay.

18 A Forty-seven, yes.

19 Q And like Representative Watt, do you remember your margins
20 of victory in those districts?

21 A They were comfortable margins of victory, and I can refer
22 to the documentation to give you the exact margins.

23 Q If you would, please.

24 A Yes. In 2004, 63.88 percent. I was unopposed in 2006.

25 In 2008, 70.28 percent. In 2010, 59.31 percent. That was my

1 lowest tabulation in all of my years. In 2012, 75, that was
2 after the new map went into effect, 75.32. And in 2014,
3 73.38 percent.

4 Q Okay. Let's talk about the redrawing of Congressional 1
5 in 2011. What were the differences in the district from 2010
6 until redrawn in terms of the percentage of African-American
7 voters?

8 A Well, I was expecting an insignificant change. I knew we
9 had to pick up 97,500 new citizens in the district. I was
10 aware of that. But I thought it could be done without much
11 disruption to the core district that I was familiar with. And
12 that's what my expectation was.

13 Q Okay. And did the new district divide more counties than
14 the prior -- did the new plan divide more counties than the
15 prior plan?

16 A Well, in the prior district -- I said this in all of my
17 speeches until I -- and I remember it so well, 23 district --
18 23 counties in the district, 13 whole counties, 10 parts of
19 counties. That was the division between whole and parts of
20 counties.

21 And after the redrawing of the districts, I only had
22 five whole counties out of 24, 19 portions of counties.

23 Q So the present district is composed of five whole counties
24 and 19 pieces of counties?

25 A Five out of 24 counties are whole counties.

1 Q Okay. Now, at some point, were you approached by
2 representative -- excuse me, Senator Rucho --

3 A Yes.

4 Q -- and Representative Lewis with respect to the plan?

5 A Yes, I had more interaction with Senator Rucho than I did
6 Representative Lewis, but I did see both of them on at least
7 one occasion.

8 Q Okay. And would you describe to the Court those
9 conversations.

10 A Mr. Speas, I've been trying to recall those events with
11 accuracy so that I could be completely accurate in my
12 testimony. I've gone back and researched my calendar from the
13 year 2011. It appears to me, and I have a calendar entry with
14 me today in case it is in dispute, but on April 21, at
15 2:30 p.m, I met with Senator Rucho in Room 300A there in -- I
16 think that's his conference room in his office building. Yes.

17 I was requested to come to Raleigh to meet with
18 Senator Rucho and Representative Lewis, and I did. After
19 talking with Representative Watt, I determined that I was
20 probably the first to be called forward to have these
21 confidential meetings, and I went ahead of Mr. Watt.

22 And so I traveled to Raleigh and had a -- I met
23 Senator Rucho for the very first time. He and I had small
24 talk. He's a dentist. My dad was a dentist for 50 years, and
25 so we had that conversation. And then, it evolved into the

1 conversation that was relevant, and that was the redistricting
2 plan.

3 I might say, Mr. Speas, that my chief of staff at the
4 time was named Tonya Williams. Tonya Williams is and was a
5 very distinguished lawyer. For five years, she worked for the
6 Senate President Pro Tem, Mark Basnight. She was his legal
7 counsel, and as such, she was his legal counsel during the
8 prior round of redistricting.

9 And as I was preparing to go to Raleigh to meet Rucho
10 and Lewis, I was admonished dozens of times -- not just a
11 couple of times, but dozens of times -- by my chief of staff to
12 be extremely circumspect and careful in how I had the
13 conversations with these two men, these two chairmen in the
14 legislature, because she explained to me, you know, her
15 experience when she served as legal counsel, and that any
16 little thing that you say could be taken out of context and
17 could be exploited if there was a motive to do that. And so
18 she admonished me so much, that I was tired of hearing her say
19 it, but she admonished me severely to do very little talking
20 and to allow these gentlemen to do most of the talking.

21 Q Did you take her advice?

22 A Absolutely, I did. That's why I believe my testimony
23 today may be a little less valuable than the other two
24 witnesses, yes.

25 Q At some point, did you see the proposed new version of

1 Congressional District 1?

2 A Mr. Speas, prior to going to Raleigh -- of course, all of
3 us have friends in the legislature, and I informally talked
4 with many of the colleagues of these two gentlemen. And I was
5 told that there was a serious conversation afoot about adding
6 Guilford County to the 1st Congressional District. And I
7 thought the source of that was mistaken.

8 And after hearing it four or five times, I then gave
9 credibility to the assertion that Guilford County was being
10 considered as an addition to the 1st Congressional District.
11 And I just absolutely could not imagine how Guilford County,
12 where we sit today, could be a part of the 1st District, which
13 extends all the way to Elizabeth City, North Carolina. And I
14 was told that it was probably because Guilford County is a
15 Section 5 county, and there was a wish on the part of the map
16 drawers, the committee chairs, to include Section 5 counties
17 within the new 1st District.

18 And so when I got to Raleigh and met with Senator
19 Rucho and Representative Lewis, my recollection is that
20 Representative Lewis did not stay in the meeting very long, but
21 he did extend a hand of friendship to me, and we chatted for a
22 few minutes. But at the end of the day, it was Senator Roucho
23 and myself in this meeting.

24 Senator Rucho had a map available for me, and it was
25 a very large map. And I'd seen redistricting maps many times

1 before. I was, as I said, a voting rights attorney, and so
2 I've seen those. I was the spokesman for the class. You may
3 may not know this, Mr. Speas, but I was the spokesman for the
4 class in the *Gingles* case. I was not an attorney of record,
5 but I was the spokesman for the class. I'm the one that
6 presented the single-member district redistricting map to the
7 North Carolina legislature and was laughed at because it
8 eliminated multi-member districts, but now it's the law of
9 North Carolina.

10 But I looked at this very large map on the table, and
11 I found it -- and Senator Rucho told me that because of the
12 population deficit, that they had to find roughly 100,000 new
13 citizens to come into the district, and I acknowledged that I
14 understood that. He said that it would probably be difficult
15 to get a mass of people in my traditional district and to meet
16 the one person, one vote goals, and that it needed to be a zero
17 deviation district, which I never understood, still don't
18 understand to this day because I think there can be -- I think
19 there is some tolerance in deviation. But the legislature has
20 adopted this zero tolerance formula.

21 But I told him that I really wanted my traditional
22 district, and if we could sort of enlarge it around the edges
23 and find 97,000 people, it would be great. But he mentioned to
24 me that we needed an urban community in order to make the
25 numbers work. And I didn't dispute that, even though I --

1 because I didn't have the resources to draw the map on my own.

2 And so I began to probe and ask him, well, what does
3 that mean? And he said, well, Raleigh's a possibility,
4 Durham's a possibility. And I said, well, I've heard about
5 Greensboro, you know, is Greensboro on the table? And he
6 acknowledged that there had been a conversation, but it
7 probably it would not be -- would not make the final map.

8 And so, I did not want to get into a situation
9 whereby it would be reported in the media that I was choosing
10 one urban area over another. I have hundreds of friends in
11 both communities and would do -- politically, I would do very
12 well in either community. And so I did not -- I went to
13 college in Durham and know a lot of people there. But Raleigh,
14 I'm right at home in Raleigh as well. And so, I was very
15 careful, extremely careful not to intimate in any way that I
16 preferred one community over another.

17 I basically said to Senator Rucho, you have the
18 computers, you have the experts. What I'm hoping for and
19 expecting is a lawful map that protects minority voting
20 strength in the district.

21 And then, as we perused the map, I honed in on Wake
22 County because that would be a new area in the district. And
23 in order to get my bearings, I asked where was Shaw University.
24 And Senator Rucho did not know where Shaw University was.
25 Didn't expect him to know; he's from Charlotte.

1 And so, he got on the phone and he summoned one of
2 his staff members to the room, or he may have already been in
3 the room, I'm not sure about that. But the staff member and I
4 leaned over the table to try to identify the campus of Shaw
5 University, because if I were to get Wake County, certainly, I
6 wanted the HPCUs. There are two in Raleigh. St. Augustine's
7 College is the other. I wanted those two campuses to be in the
8 Congressional District.

9 And so, as we got our bearings and I figured out what
10 I was looking at, I said, okay, this is Shaw, this is the state
11 capitol, this is St. Augustine's College, this is South
12 Raleigh. I have my bearings now, and I see what you're talking
13 about -- what you're talking about. And Senator Rucho said,
14 well, do you like it? And I said, I'm not giving you an
15 opinion, you know. I see what you're proposing. I don't have
16 an opinion one way or another about whether I want it or
17 whether I don't want it. I didn't tell him that Tanya told me
18 to be quiet, but I was certainly following her advice to the
19 tee. And I was very proactive not to, even in my body
20 language, to try to suggest that I preferred one map over the
21 other. So the meeting came to a cordial end, we shook hands,
22 and we departed.

23 I returned to Washington and told my staff and all of
24 my confidants about it. And I was mentally preparing to pick
25 up Wake County because I thought that's the way it was going to

1 be. I began politically accumulating mailing lists and all of
2 the other things that politicians do in Wake County, and
3 Senator Rucho and I had exchanged cell phone numbers.

4 One day, I received -- and it wasn't but a few days,
5 I received a telephone call from Senator Rucho indicating that
6 everything that we had talked about in his conference room was
7 off the table. Just wipe the slate clean, forget the
8 conversation ever happened, it's going to start over. And he
9 continued to indicate to me that the majority minority
10 districts, under the law, under *Strickland*, had to exceed
11 50 percent. And while I had been out of voting rights
12 litigation for many years, because as a judge, you don't get
13 involved in voting rights litigation, at least at the state
14 level. These gentleman certainly do. But I lost track of
15 jurisprudence of voting rights for the 15 years that I was on
16 the bench.

17 And so, he told me that their lawyers were telling
18 him that minority districts had to exceed 50 percent. And I
19 said, wow, I did not know that, you know. I don't know
20 anything about *Strickland*. I remember *Gingles*, but I don't
21 know very much about *Strickland*.

22 And so I just said, you know, that's what the law
23 requires, then that's what it has to be. But I didn't believe
24 it then, and I don't believe it now.

25 And so, after the telephone call, then I'm anxiously

1 awaiting what the new map will look like, and that's when I saw
2 Senator Floyd McKissick, Jr., one day. And Floyd said, you
3 know, how would you feel if Durham were added to your district?
4 And I said, I don't know. I was very coy with Floyd as well.
5 And he says, well, that's the conversation now. And I said,
6 well, I look forward to the final maps.

7 And sure enough, the final maps were being readied
8 for public display. And my records show that on June 21, 2011,
9 at 2:00 in the afternoon in Room 328 of the legislative office
10 building, I again met with someone, and I think the someone was
11 Senator Rucho. My notes say that it was. I don't believe
12 Representative Lewis came to that meeting, but I may be in
13 error on that.

14 But that's when I was told that Durham would be in
15 the district. But that was -- that the law mandated that
16 50 percent of the district must be greater than 50 percent in
17 African-American voter age population, that it had to be a zero
18 tolerance in the deviation, and there needed to be communities
19 of interest and compactness, to the degree that it could be
20 compact, and that this was the best map they could come up
21 with. And I didn't say very much, and I left the meeting.

22 And a few days later, my chief of staff stormed into
23 my room and wanted to know why I would agree to the
24 inclusion -- that I would say that I would prefer one county
25 over another. And I assured Tonya that that absolutely did not

1 happen. And she said, well, Senator Rucho has put it in his
2 report, that you made these statements to him, and that your
3 statements were a motivating reason why the district was drawn
4 the way it was. And I was very upset about that then and
5 continue to be today.

6 Q At some point, did you come to write a letter to Senator
7 Rucho with regard to your concerns?

8 A I certainly did. And I --

9 Q And if you would, Representative Butterfield, turn to the
10 Butterfield tag in the notebook in front of you, and then turn
11 to the single exhibit which is there, which is labeled
12 Defendant's Exhibit D19. And I would ask you if that is a
13 letter you wrote on July 22, 2011, to Senator Rucho and
14 Representative Lewis?

15 A I authored the letter dated July 22, 2011, which is
16 Exhibit No. D19.

17 Q And was this letter read on the floor of Senate by Senator
18 Ed Jones?

19 A I am informed that the letter was, indeed, read by the
20 late Senator Ed Jones at my direction.

21 Q And was Senator Jones an African-American member of the
22 North Carolina Senate?

23 A He was, and a constituent.

24 Q And a constituent. And would you read for the Court your
25 final paragraph in that letter.

1 A The final paragraph reads as follows.

2 Quote: "Using the Voting Rights Act as justification
3 to advance partisan goals in the rest of the state is
4 unconscionable and mocks the very spirit and purpose of the
5 law. The voters in District 1 and the citizens of our great
6 state deserve better. I urge the committee and the members of
7 the North Carolina General Assembly to heed the concerns
8 expressed by the public and honor legal protections designed
9 and enforced to protect minority voters." End of quote.

10 Q All right. You've spent a lifetime in Eastern North
11 Carolina.

12 A I have.

13 Q And over those years, in lots of capacities, have you
14 developed an understanding of the voting patterns in that area
15 of the state?

16 A I don't think there's anyone in Eastern North Carolina
17 more uniquely equipped to evaluate the voting patterns in
18 Eastern North Carolina. I don't do it scientifically, but I
19 have experienced it in one way or the other since 1968.
20 Probably since 1957, when my dad was defeated. But I was a
21 child then, so I will pick it up in 1968. I've been involved
22 in every election in Eastern North Carolina beginning in 1968.

23 Q And the present African-American voting-age population in
24 your district is in excess of 52 percent; is that correct?

25 A Currently, my records suggest that the black VAP is

1 52.65 percent.

2 Q Okay. And based on your years in electoral politics in
3 Eastern North Carolina, is that number necessary to allow
4 African-American citizens to elect their candidate of choice --

5 A No, it's not necessary. It's excessive. It's
6 unnecessary. When the black voting-age population was
7 47 percent, I did quite well. And with 52 percent, you can see
8 a marked increase in my electoral success. And I can tell you
9 that 52 percent is not necessary in order for not just me, but
10 any African-American candidate or any candidate who is the
11 choice of the African-American community to win, 47 percent is
12 sufficient.

13 Q And I believe you testified a few moments ago that after
14 the redistricting, you won in 2012 by 75 percent?

15 A Yes, sir. It went from 59 percent in 2010 to 75 percent
16 in 2012.

17 Q And this past time, it was 73 or so percent?

18 A 73.38 percent.

19 Q Okay. Based on your many years in politics and public
20 life, tell the Court what you -- your view of the level of the
21 extent to which white citizens in Eastern North Carolina will
22 vote for black citizens.

23 A Mr. Speas, there has been racially polarized voting all
24 across North Carolina since the beginning of our democracy.
25 That is not in dispute. What may be somewhat in dispute is the

1 severity of the polarization.

2 And what needs to also be a part of this conversation
3 is what region of the state are you addressing the polarization
4 question, because no one size fits all.

5 Q Is Charlotte different than Wilson?

6 A I was listening to Senator Blue's testimony today, and
7 there's no resemblance between voting behavior among white
8 citizens east of Interstate 95 as opposed to the urban areas of
9 Wake and Mecklenburg County. It's regrettable, but that is a
10 fact.

11 Q In Eastern North Carolina, what is your judgment as to the
12 level of white voting?

13 A My judgment is not scientific, Mr. Speas.

14 Q I understand.

15 A But it is based on 40-plus years of direct voter
16 participation. I round it off just for discussion purposes. I
17 would say that most African-American candidates -- and there
18 are exceptions. Most African-American candidates and most
19 candidates who are the choice of the African-American community
20 generally can never depend on two out of three white voters.
21 In other words, 66 percent of white voters, in my opinion, will
22 never vote for an African-American candidate for most
23 positions.

24 And as I said, there have been exceptions, and I
25 acknowledge that. But the converse of that is also true.

1 About 33 to 35 percent of white voters will vote for a
2 qualified candidate who is African-American or the choice of
3 the African-American community if they prove their metal.

4 MR. SPEAS: Okay. Thank you very much, Congressman
5 Butterfield. I have no more questions at this point.

6 THE COURT: Cross-examination?

7 MR. PETERS: Thank you, Your Honor.

8 Good afternoon, Congressman Butterfield. My name's
9 Alec Peters. I'm with the North Carolina Attorney General's
10 Office. And I do have a few questions for you.

11 CROSS-EXAMINATION

12 BY MR. PETERS:

13 Q First, I noted that you took some notes up with you to the
14 stand. And may I ask you what it was you took up with you?

15 A You can. It's a table that I had personally typed in my
16 office just for reference purposes, and you're certainly
17 welcome to view it.

18 I have my black voter age population figures both
19 before and after 2011. I have the dates on which I met with
20 Senator Rucho, and I have some what we call in Washington
21 talking points, one size fits all. Minority percentages don't
22 make sense. The other is polarized voting is severe in Eastern
23 North Carolina.

24 The other talking point, and maybe that's not a good
25 way to describe it. The other point is two out of three white

1 voters will not vote for the choice of the African-American
2 community.

3 The next point is only one of three white voters will
4 consider voting for an African-American candidate.

5 And the other is basically a restatement of the law,
6 which says when race is a predominant factor, then the remedy
7 must be narrowly tailored.

8 And then I have 13 whole counties and five whole
9 counties. And then I have the names of three judges so I would
10 not get in trouble with the Court.

11 MR. SPEAS: Thank you, Congressman. I'll ask
12 plaintiff's counsel if we can have a copy of that provided to
13 us, please?

14 THE WITNESS: Certainly, you can.

15 THE COURT: I'm sorry.

16 MR. SPEAS: May I approach the witness? Would you
17 like to view it now?

18 MR. PETERS: Sure. Let me look at it now.

19 THE WITNESS: And Mr. Peters, I have your name up
20 here as well.

21 MR. SPEAS: May I approach?

22 THE COURT: You may.

23 BY MR. PETERS:

24 Q Congressman Butterfield, I want to thank you for letting
25 me look at that because there were a couple of times my hand

1 was not keeping up with me as I tried to take notes, and you've
2 helped me out.

3 You testified, I believe, earlier about the margins
4 of victory in your various races. And I believe I wrote down
5 that in 2004, it was around -- I'm going to round here --
6 63 percent?

7 A Yes.

8 Q And in 2006, you were unopposed?

9 A Yes.

10 Q All right. In 2008, it was over 70 percent; is that
11 correct?

12 A Yes.

13 Q And then in 2010, it was 59?

14 A Yes.

15 Q Then in 2012, over 75 percent?

16 A Yes.

17 Q In 2014, it was just over 73 percent?

18 A Correct, right.

19 Q So of the five elections in which you had an opponent,
20 three of them had a margin of over 70 percent; is that correct?

21 A Three of the five had margins greater than -- yes, greater
22 than 70 percent.

23 Q All right. And one of those was under the 2001 Plan,
24 wasn't it, not under the 2011 Plan?

25 A That is correct -- no, that is not correct. Ask the

1 question again.

2 Q One of those margins of victory that was over 70 percent,
3 the one in 2008, would have been under the 2001 Congressional
4 District --

5 A That's correct.

6 Q -- Congressional Plan; correct?

7 A Yes.

8 Q Okay. Thank you. One other thing I wanted to pick up on,
9 you mentioned -- and you may have answered this, but I want to
10 make sure it's clear.

11 You said you had heard that there might be some
12 discussion about drawing the 1st District into Guilford County?

13 A Yes.

14 Q Do you remember who you heard that from?

15 A I don't. It was a member of the legislature, I would
16 guess a member of the State Senate. So it would have either
17 been Senator Ed Jones or Senator McKissick, probably one of
18 those two, yes.

19 Q And I believe you said you did discuss that with Senator
20 Rucho --

21 A Yes.

22 Q -- when you met? And his -- excuse me. Go ahead.

23 A He dismissed it when I brought it up, yes.

24 Q All right. When you say he dismissed it --

25 A He acknowledged -- he acknowledged that it had been a

1 conversation, but I got the impression that it was not likely
2 to happen.

3 Q Thank you.

4 A Yes.

5 Q Now, you commented that you were careful, based on
6 Ms. Williams' advice, not to state a preference for Wake or
7 Durham County when you were meeting with Senator Rucho and
8 Representative Lewis; did I get that right?

9 A That is correct.

10 Q And why was it you didn't want to state a preference?

11 A Two reasons. One was political. I did not want the
12 voters of the county that I did not choose to feel that they
13 would be unwanted, you know, in a district that I would
14 represent.

15 Secondly, because I know how litigation works. I
16 spent 30 years in a courtroom, and I know how it works. And I
17 know the less you say, the better you are.

18 Q Would I be correct in saying you didn't want to say
19 something you would be unhappy to hear repeated back, say, in
20 court today?

21 A Yes.

22 Q All right. Let me ask you to look at the white notebook
23 that Mr. Speas had you looking at. Behind the tab with your
24 name on it, there's a tab that says 19?

25 A Yes.

1 Q Do you see that?

2 A I do.

3 Q And that's the letter that you wrote to Senator Rucho and
4 Representative Lewis; correct?

5 A It is.

6 Q And it's marked down at the bottom left-hand corner
7 Defendant's Exhibit 19?

8 A Yes.

9 Q All right. Let me ask you a few questions about that.
10 Let me ask you to look at the second paragraph, which -- let me
11 just ask you to read the first sentence of the second
12 paragraph.

13 A Yes, and this is refreshing my memory. I'm glad you
14 directed my attention to this.

15 Quote: "It is regrettable that you would use the
16 Voting Rights Act and my objection to the removal of Gates,
17 Washington, Beaufort, Craven, Jones, and Wayne Counties to
18 justify wholesale changes to the proposed congressional map."

19 Should I continue?

20 Q That's fine. Thank you.

21 A Yes.

22 Q Why were you objecting to the removal of Gates,
23 Washington, Beaufort, Craven, Jones, and Wayne Counties?

24 A I felt it was unnecessary. It was too much of a radical
25 change to the core district that I knew so well.

1 Secondly, these were Section 5 counties that I
2 believe needed the protection of and the ability to elect a
3 member of Congress of their choosing. And I just thought that
4 it was absolutely unnecessary to take these counties out of the
5 mix when there were many other ways that a legal district could
6 have been configured.

7 Q Why did the fact that they were Section 5 counties make
8 you think they should be kept part of District 1?

9 A Because Section 5 counties, by definition, are counties
10 that have histories of voter discrimination and
11 disenfranchisement. And we have been trying to remedy past
12 discrimination in Section 5 counties -- all counties, but
13 particularly all the Section 5 counties for generations. And
14 to see those counties just absolutely removed from a majority
15 minority district and submerged into the adjoining district, I
16 felt, was unneeded, unnecessary, and unfair to the citizens of
17 those counties.

18 Q All right. Were any of those counties or portions of any
19 of those counties put back in District 1 by the time the
20 district was actually enacted?

21 A Yes, all except Jones County.

22 Q All except Jones?

23 A Yes.

24 Q So Gates -- at least a portion of Gates, Washington,
25 Beaufort, Craven, and Wayne were put back in your district?

1 A Well, we call the Gates County area the Albemarle region.
2 The counties in the Albemarle region are Gates, Chowan,
3 Perquimans, and Pasquotank. And, traditionally, I have always
4 represented those four counties. My two predecessors have
5 likewise represented those four.

6 And so, even though these four were in the final map,
7 only the black communities of these four counties were in the
8 final map. The white communities were -- and the more
9 Republican-leaning communities were excluded from the final
10 map. And that was very confusing to me why the map drawers
11 would actually go into the Albemarle region and just cherry-pick
12 African-American communities and leave those in my district,
13 and to allow the remaining communities to go into the 3rd
14 Congressional District. It was very hard to comprehend.

15 In fact, I even drew a map of it just for my own
16 edification over the weekend. And as I look at it today, it
17 just makes no sense to me at all. I look at Beaufort County,
18 for example. I have represented six precincts -- six voting
19 precincts in Beaufort County, which is the town of Washington,
20 Your Honors, as the county seat. And now I've been reduced
21 from six precincts to three precincts, and those are the
22 African-American precincts in the town of Washington. And it's
23 obvious to me that this is partisan, racially motivated
24 gerrymandering, and it's offensive. It's offensive to me.
25 It's offensive to the people that I represent.

1 Q Thank you. But I believe my question was, am I correct
2 that the enacted version of Congressional District 1 does
3 include a portion of Gates, Washington, Beaufort, Craven, and
4 Wayne Counties?

5 A You didn't use "portion" in your first question.

6 Q If I didn't, that was my mistake.

7 A You did not. That's why I went through all the lengthy
8 explanation. But yes, that is true.

9 Q Thank you.

10 A Yes.

11 Q And the first iteration of the Congressional Plan and the
12 final iteration of the Congressional Plan that was enacted does
13 include portions of Chowan, Perquimans, Pasquotank?

14 A Portions. And I will again repeat those portions are
15 predominantly -- overwhelmingly African-American communities.

16 Q In your letter of July 22nd, you did not say anything
17 about Chowan, Perquimans, or Pasquotank; did you?

18 A I did not, no.

19 Q Thank you. And, now, in the first iteration of the
20 Congressional District, it's correct, isn't it, that your --
21 the 1st Congressional District was drawn into Wake County?

22 A Wake County? Yes, sir.

23 Q Yes, sir.

24 A That is correct.

25 Q And I believe you said you were looking at the map, trying

1 to figure out where St. Augustine's and Shaw would be in that?

2 A Yes.

3 Q But the version that was enacted went into Durham County
4 rather than Wake County; is that right?

5 A That is correct.

6 Q All right. And the original version of the 1st District
7 enacted in 1991 also went into Durham County, didn't it, or do
8 you recall?

9 A You're taking me back a long ways. I don't think so. I
10 think District 12 went into Durham County, and District 1 went
11 into New Hanover County.

12 Q Let me see if this helps a little bit, Congressman. You
13 should have a black notebook up there that on the front says,
14 "Historical Congressional Maps 1991 to 2011."

15 A Yes.

16 Q And there's an exhibit sticker down at the bottom,
17 Defendant's Exhibit 126. And let me ask you to look at
18 district -- at Tab 1, which is taken from the submission for
19 the 1991 Congressional Plan. If you look at the third page of
20 that, you can see a closeup of District 1.

21 A I do now recall, Counselor. I do now recall. It did go
22 into Durham.

23 Q Thank you.

24 A Because Ken Spaulding and Mickey Michaux ran for Congress,
25 I believe.

1 Q Thank you. Now, looking back at your letter --

2 A No, I stand corrected on that. Michaux and Spaulding ran
3 pre-'91. So please continue your line. I'm trying to refresh
4 my memory. Yes.

5 Q That's fine. I realize it was sometime ago.

6 A Yes.

7 Q Looking back at your letter, in that second paragraph, the
8 last sentence reads:

9 Additionally, the amended plan -- let me, before I
10 start. Do you have that letter back in front of you?

11 A Yes.

12 Q The last sentence reads:

13 Additionally, the amended plan unnecessarily, quote,
14 "packs," closed quote, new African-American voters from
15 counties not covered by Section 5 of the Voting Rights Act into
16 District 1.

17 Did I read that correctly?

18 A No. Are we still on the July 22nd letter?

19 Q Yes, sir, the second paragraph, the last sentence of the
20 second paragraph.

21 A The last sentence of the second paragraph.

22 Q I'm sorry.

23 A All right. Additionally -- I'm with you, yes.

24 Q In that sentence, what do you mean by the word "packs"?

25 A To pack a community, to me, means to encompass a voting

1 bloc of people and to unnecessarily attach those people to
2 another community to achieve a goal that is not mandated by law
3 or necessary.

4 Q So in your understanding, does the term "pack" have
5 anything to do with how many people are included in the
6 district, whether it's a supermajority or a bare majority?

7 A There are degrees of packing, certainly. But any time you
8 have a district that's already 47 percent African-American, and
9 continuously, for more than a decade, has elected a candidate
10 who is the choice of the African-American community, to then
11 scoop up additional communities of African-American voters, and
12 to add those voters to the existing majority minority district,
13 is -- meets the definition, in my view, of "packing." It's
14 putting too many into a community in order to achieve a result.

15 Q All right. Looking a little further down in this letter,
16 and this has been mentioned earlier today, it's correct, isn't
17 it, that as of the 2010 Census, the 1st Congressional District
18 was underpopulated by over 97,000 people?

19 A That is accurate.

20 Q Do you have a sense, based on your knowledge of Eastern
21 North Carolina, how that came to be why the 1st Congressional
22 District came to be so underpopulated compared to, say, the
23 12th that I believe Congressman Watt testified earlier was
24 overpopulated by just a couple thousand?

25 A I think I know. North Carolina has been allocated 13

1 representatives based on the census, and that went unchanged
2 after the 2010 Census. But in the meantime, the population of
3 our state increased to 9 million people, which was about 1-1/2
4 million people more than the prior decade. And so, by
5 definition, the districts had to increase in ideal size.

6 And, at the same time, concurrent with that was a
7 loss of population in rural communities. And so the growth of
8 the state coupled with the loss of population in rural
9 communities resulted in a 97,500-person deficit. And I
10 recognized that clearly when we had these conversations. I
11 knew we had to find 90-plus-thousand people.

12 Q Right. Now, going back to the margins of error that you
13 mentioned -- excuse me -- the margins of victory that you
14 mentioned in your elections, in 2008, when you had a margin of
15 receiving 70.28 percent of the vote, I think is what I have
16 written down, and would I be correct that that means your
17 opponent received 29 point --

18 A Seventy-two.

19 Q -- 72 percent of the votes?

20 A Yes, sir.

21 Q Right. Do you know what that translates into in numbers?

22 A Oh, I would have to use pencil and paper to figure that
23 out. Probably between 250 and 300,000 votes, I suppose.
24 There's 730,000 people in the district. Probably 300,000 are
25 registered voters -- 300-plus-thousand are registered voters.

1 And so 10 percent would be -- it probably says that my opponent
2 probably received 80 or 90,000 votes.

3 Q Compared to your --

4 A Well in excess of 100,000.

5 Q Okay. Do you know if that margin was more or less -- the
6 97,500 more or less than the amount by which the district had
7 become underpopulated? And if you don't know that --

8 A I'm doing the math. I'm doing the math, yes. I don't
9 know.

10 Q All right. Thank you.

11 A I don't want to guess at it. I don't know.

12 Q All right. Thank you.

13 A Yeah.

14 Q I believe you testified earlier that the African-American
15 population of the district as it existed in the 2000s, so in
16 other words, the 2001 Congressional District after the 2000
17 Census, I believe you testified that was around 47 percent?

18 A My records show 47.66.

19 Q Do you recall whether that is total black population,
20 voting-age population, or --

21 A Eighteen and over voting-age population.

22 Q Do you recall whether it is total black or single-race
23 black, people who -- do you -- I'll put it a different way.

24 Do you recall whether that is limited only to the
25 people who identified themselves on the census as being black,

1 or does it also include the people who identified themselves as
2 being part black?

3 A I know what you're asking, and I don't know. I've seen
4 these cross-tabs on the census data, and I don't know if BVAP
5 also includes these multiple categories. I don't know.

6 Q All right. And that was -- that 47 percent was under the
7 2000 Census; is that correct?

8 A Correct.

9 Q Would you agree that the census is a snapshot of what a
10 population looks like as of the time it's taken?

11 A Yes, they do. The American Community Surveys, you know,
12 during the midterm --

13 Q Right.

14 A -- and for that very reason.

15 Q All right.

16 A Yes.

17 Q Let me ask you to pull out the black notebook again, which
18 is Defendant's Exhibit 126. And let me ask you to look at Tab
19 5.

20 A All right, sir.

21 Q And do you see that that says, Congress Zero Deviation?

22 A Yes, sir.

23 Q Do you recall whether or not that was the name of the 2001
24 Congressional Plan?

25 A Yes, it is.

1 Q All right. And that's marked as Defendant's Exhibit 4.4A
2 up in the upper right corner of that map?

3 A Yes.

4 Q Let me ask you to turn a few pages back to the page that
5 at the top says, voting-age population by race?

6 A You said "back." Do you mean forward or back?

7 Q It would be behind that map, and it's going to be one,
8 two, three, four pages behind that map.

9 A The map that I'm looking at is the first document under
10 Tab 5.

11 Q Correct.

12 A So it would be after the map?

13 Q After that map, yes, sir.

14 A After the map, I see Exhibit 4, which is the fourth
15 affidavit of Dan Frey.

16 Q Right. Then go three more pages behind that.

17 A Yes, sir.

18 Q And you should see one that says, district attributes,
19 Congress Zero Deviation, voting-age pop by race.

20 A I have it.

21 Q All right. And do you see where District 1 is noted in
22 the left-hand margin?

23 A Yes.

24 Q And if you go over three columns, do you see the one that
25 says, VA: black?

1 A Yes.

2 Q And what does it note for the percentage for District 1 in
3 that column? And I realize some of these numbers are small.

4 A They are, and the copies are not as clear as they probably
5 could be. It appears -- I'm going to go across with you. I'm
6 seeing District 1, total is 457,936. VA white is 223,452.
7 Black is 218,732. Native would be 3,273. And then I guess
8 Asian/Pacific Islanders would be the next, 2370. I don't see a
9 percentage.

10 Q If you look at the line under that, you see that number
11 translated into a percent?

12 A I do. 47.76 percent.

13 Q Is that the 47 percent number you've been talking about?

14 A Absolutely.

15 Q Now, if you look over in the last column, do you see VA:
16 multi-race?

17 A Yes.

18 Q And what's the number and the percentage there?

19 A .71 percent, less than 1 percent.

20 Q All right. Now, let me ask you to look at Tab 6, which is
21 Defendant's Exhibit 4.5A. And I'll represent to you this is
22 the same map but with data based on the 2010 Census. And I'm
23 afraid these numbers are going to get even smaller.

24 If you look one page behind that map, you'll see it
25 says, Exhibit 5, fourth affidavit of Dan Frey, Congress Zero

1 Deviation 2010 Census. And that's Defendant's Exhibit 4.5?

2 A Yes.

3 Q All right. Now, let me ask you to go to two sheets behind
4 that, and you'll have to turn the page sideways. And do you
5 see a page that says, stat pack report of total population by
6 race and ethnicity, Congress Zero Deviation?

7 A Yes.

8 Q And do you see the column and line for District 1?

9 A Yes.

10 Q All right. Now, let me ask you to follow that line over
11 to the column that says, percent black. And can you tell me
12 what that number is?

13 A 49.65 percent.

14 Q All right. Now, let me ask you to keep going.

15 THE COURT: Hold on just a second. I'm not sure
16 we're on the right page. Down at the bottom of the page on the
17 CM/ECF filings --

18 MR. PETERS: Yes, sir.

19 THE COURT: -- 28 of 45, what page are you on?

20 MR. PETERS: It says 27 of 45.

21 THE COURT: You said that was 49.65? Okay. And you
22 may continue.

23 BY MR. PETERS:

24 Q Now, let me ask you to keep going over to -- do you see a
25 column that says, (MR) black?

1 A Yes, sir.

2 Q All right. And what is that percentage?

3 A 1.00 percent.

4 Q All right. And if you go over two more columns, do you
5 see a column that says, total percent black?

6 A Yes, sir, 50.65 percent.

7 Q All right. Now, let me ask you to look at the next page.
8 And this would be the one I think Judge Osteen was on a minute
9 ago, 28 out of 45. And we'll look at the same things.

10 Do you see in the line for District 1 a column that
11 says, percent black?

12 A Yes, sir.

13 Q And what does it say?

14 A 48.07 percent.

15 Q All right. Do you see a column a ways down that says,
16 percent multi-race black?

17 A Yes, sir, 1.04 percent. Yes, that is correct. "MR" means
18 multi-race, yes.

19 Q All right. Keep going two more columns, and you'll see
20 one that says --

21 A Multi-race black, yes.

22 Q Right. And what is that number?

23 A It appears to be .56 percent, less than 1 percent.

24 Q And then two more columns, do you see, total percent
25 black?

1 A Yes, sir.

2 Q And can you read that?

3 A 48.83 percent.

4 Q So, at least based on this -- these numbers from the 2010
5 Census, the voting-age population of District 1 had actually
6 gone up -- the black proportion of the voting-age population in
7 District 1 had gone up since 2000; had it not?

8 A That's what this document reveals, and it seems reasonable
9 that that would be correct.

10 Q Now, let me ask you to look at the next page where it
11 says, Stat Pack Report of Voter Registration by Party and Race,
12 Congress Zero Deviation. Do you see that?

13 A Yes.

14 Q And I'm going to just ask you to look for the line for
15 District 1, and then look all the way over in the last block of
16 columns where it says, Registration by Race Without Regard to
17 Party.

18 A Yes, sir.

19 Q And do you see the percent black figure given there?

20 A It's a smudgy copy, but I'm going to say that it appears
21 to be 50 -- 50.66 percent.

22 Q That's what it appears to be to me as well. I agree it's
23 not an ideal copy. But -- so based on these numbers, according
24 to this data, the majority of the registered voters in District
25 1 as of the 2000 Census were African-American -- identified as

1 African-American; is that correct?

2 A Yes, as of 2011.

3 Q Now, let me ask you, are you familiar with how the census
4 counts Hispanics in -- when it does its counting?

5 A I know the US Census Bureau makes a very deliberate effort
6 to try to accurately take the count, and I know there are
7 various methodologies that are used. I know there's a lot of
8 advertising in Hispanic communities to encourage an accurate
9 count, and I know the census enumerators literally go into the
10 communities, knock on the doors, and do everything within their
11 power to get an accurate number.

12 Q What I was -- I didn't -- I don't think I phrased that
13 particularly well.

14 Are you aware whether, in the census, a distinction
15 is drawn between race and ethnicity?

16 A Yes.

17 Q And what is that distinction as you understand it?

18 A I'm not sure I fully understand it because it has evolved
19 over the years. But ethnicity would be a description of the
20 individual's heritage or lineage and how the person
21 self-identifies. And so, if a person identifies as black,
22 obviously, the ethnicity would be African-American. If they
23 identify as mixed race or a -- I forgot the categories, but
24 there are two or three different categories. But I think all
25 of these are lumped into one category of ethnicity being

1 African-American.

2 Q All right. Do you -- well, let me try it this way. If
3 you still have the notebook in front of you, the one with the
4 plans in it. And we were on the page that at the bottom says
5 page 29 of 45.

6 A Yes.

7 Q And the next page would be page 30 of 45.

8 A Yes.

9 Q And at the top, it says, Stat Pack Report of Voter
10 Registration by Gender, Age, and Ethnicity. Do you see that?

11 A Yes.

12 Q And if you look at the last column there, do you see it
13 makes a distinction, simply, Voter Registration By Ethnicity;
14 it makes a distinction between Hispanic and non-Hispanic?

15 A Yes.

16 Q Let me ask you to turn back forward to the page that at
17 the bottom is marked page 27 of 45.

18 A I'm there.

19 Q All right. Look at the very last column there -- well,
20 the last two columns. And do you see columns that say, white,
21 non-Hispanic, and percent white non-Hispanic?

22 A Yes.

23 Q In that last column, percent white non-Hispanic, what's
24 the number there?

25 A 270,686.

1 Q And what's the percentage?

2 A 42.58 or either 56.

3 Q All right. And if you look back at the beginning, the
4 early columns in that, where you see white and percent white?

5 A Yes.

6 Q The total percentage of white there is shown as
7 44.19 percent; isn't it?

8 A That is correct.

9 Q But of those, according to this chart at least,
10 42.58 percent are non-Hispanic whites.

11 A That is correct. I suppose because some Hispanics
12 identify as white and some don't.

13 Q Right.

14 A Yes.

15 Q And by the same token, some blacks could identify as
16 Hispanic, and some others might not; is that correct?

17 A There may be incidence of that, but probably less
18 prevalent as opposed to the other way.

19 Q And again, on page 28, the one that says 28 of 45, which
20 is the next page. If you look in the column that says, percent
21 white, for District 1, it says 46.92 percent; is that correct?
22 The column that just says, percent white.

23 A Percent white is 46.92 percent.

24 Q Right.

25 A Yeah.

1 Q And if you look at the very last column, the percent white
2 non-Hispanic is 45.59 --

3 A That is correct.

4 Q -- is that correct? Excuse me one second, Your Honor.

5 Congressman, let me ask you to look at that page
6 again, the one that's 28 of 45. And I just want to make sure
7 this is clear for the record. Up at the top of that page, does
8 it say it's voting-age population by race and ethnicity?

9 A Yes. The header says, report -- Pack Report of Voting-Age
10 Population By Race and Ethnicity.

11 Q And the page ahead of it, the one that at the bottom says
12 27 of 45, that one is headed, Stat Pack Report of Total
13 Population By Race and Ethnicity.

14 A Yes. Page 27 of 45 is delineated as total population, and
15 28 is delineated as voting-age population.

16 Q Now, Congressman Butterfield, Mr. Speas asked you some
17 questions about voting in Northeastern North Carolina, and I
18 think you kind of shorthanded it as east of I-95, what the
19 voting patterns would be, and comparing it to what Senator Blue
20 had testified to this morning.

21 Is it your testimony that racially polarized voting
22 still exists in many places east of I-95?

23 A It does. When I did voting rights litigation, it was
24 extremely severe, and there were numerous studies conducted
25 that were accepted by the Court that concluded that with the

1 racially polarized voting as it existed then, with multi-member
2 districts for the state legislature, that it was nearly
3 impossible -- I think the Court may have said 1 out of 100,000,
4 that was the *Gingles* Court, Judge Phillips presiding, 1 out of
5 100,000 chances of being elected.

6 And so, as recently as 30 years ago, voting was so
7 polarized that it was nearly impossible for the preferred
8 candidate to get elected. That has improved over the years.
9 But I still believe that two out of three white voters in
10 Eastern North Carolina, particularly in Northeastern North
11 Carolina, which I feel that I'm expert enough to testify
12 regarding because I've been there all of my life, have been
13 into every town, village and hamlet and crossroads in
14 Northeastern North Carolina, know thousands of people. I
15 firmly believe that the preferred candidate of the
16 African-American community probably can expect to get one out
17 of -- if qualified, and we all have different definitions of
18 "qualification," but I think we can probably agree on what
19 "qualification" means, that a qualified -- a qualified
20 candidate who is the preferred candidate of the
21 African-American community, for planning purposes or for
22 strategic purposes, can count on getting one out of three white
23 votes in Northeastern North Carolina.

24 And that means that two out of three will probably
25 not vote for that candidate. There have been exceptions, I'm

1 proud to report.

2 Q So just so I'm clear, though, it is your belief that
3 racially polarized voting still exists --

4 A It still exists without question.

5 Q -- in Northeastern North Carolina? I'm sorry?

6 A It still does exist without question.

7 Q All right. Did you believe it was necessary, in drawing
8 the 1st District, to maintain an African-American population
9 sufficiently high to ensure that African-Americans could elect
10 their candidate of choice?

11 A I think it was important that the legislature look at
12 voting behavior and past electoral success and failures to
13 determine what is the appropriate level of minority -- of
14 African-American voter registration and voting-age population
15 in order to level the playing field to give the preferred
16 candidate an equal opportunity to get elected. And I don't
17 believe that an unofficial number, such as greater than
18 50 percent, is suitable because it should be area specific,
19 maybe not county specific, but certainly regional -- region
20 specific, because what -- the coalition politics of Mecklenburg
21 and Wake County unfortunately don't exist in Northeastern North
22 Carolina.

23 And so, the preferred candidate, usually the
24 African-American candidate, must go out and walk the delicate
25 balance between the interests of the white community and the

1 interests of the African-American community, and that's very
2 difficult.

3 Q And I believe your testimony has been that you believed
4 that the 47.76 percent African -- white voting-age population
5 accomplished what you're describing?

6 A Without question. Not just for me personally, and I
7 continue to tell anyone who's willing to listen this -- listen
8 to this. It's not about my electability, because I am unique,
9 if I must say that about myself, because I've been out there in
10 the trenches for 45 years, served as a judge in most of the
11 counties that I now represent in Congress. And so, I have some
12 political advantages that other candidates probably will not
13 have in the future.

14 And so, while I'm concerned about my own electoral
15 success, I'm also concerned about the success of those who
16 follow me. And I believe that 47 percent is a suitable number
17 that in a qualified candidate who is the choice of the
18 African-American community can be competitive in the 1st
19 Congressional District.

20 Q Do you believe a suitably qualified African-American
21 candidate in the 1st District who is the candidate of choice of
22 African-American voters could be elected if the black
23 voting-age population was reduced from 47.76 percent?

24 A Conceivably, yes.

25 Q How far do you think it could be reduced?

1 A I wouldn't take it below 45.

2 Q So you think if it went under 45, then that would call --

3 A I think the playing field is level at 47. I think at 46,
4 it gets to be a little bit more difficult; 45, it gets more
5 difficult, but still competitive. And I think the law should
6 just guarantee the ability to compete fairly, and so, I feel
7 most comfortable with 47.

8 Q All right. And do you have an understanding of whether
9 the 1st Congressional District -- well, let me approach it this
10 way.

11 Let me ask you to look one more time at the white
12 notebook, Tab 19 behind your name, the third paragraph that
13 begins at the bottom of page 1 with the words, "from the
14 beginning..."

15 A Yes, sir.

16 Q Could you read that first sentence, please.

17 A Okay. Quote: "From the beginning, I simply ask that you
18 start with my current district and add 97,500 people to comply
19 with one person, one vote requirements in a manner that would
20 comply with the Voting Rights Act."

21 Q And when you say "in a manner that would comply with the
22 Voting Rights Act," which parts of the Voting Rights Act were
23 you -- did you have in mind?

24 A Section 2, principally, that is, that the minority -- that
25 the African-American vote not be diluted to such an extent that

1 the vote -- the voters would be unable to influence the outcome
2 of an election.

3 Q And it's true, isn't it, that District 1 was initially
4 drawn to comply with Section 2 of the Voting Rights Act?

5 A It was. I remember it very well.

6 Q Despite the fact that it also happens to include many
7 counties that were at the time covered by Section 5?

8 A A substantial number of District 1 counties are Section 5
9 counties, and there are historical reasons for that.
10 Northeastern North Carolina was the venue for most of the slave
11 plantations in North Carolina during the period of slavery.
12 And when slavery ended 150 years ago, many African-Americans
13 continue to live on the soil.

14 And they, through the years, have begun to have
15 families and to multiply, and the population -- the population
16 of African-American communities continues to be high as
17 compared to the white communities. In Ward County, for
18 example, majority-black. Halifax County, majority
19 African-American. Northampton County, Hertford County, Bertie
20 County, all of these counties are majority African-American and
21 there are historical reasons for it.

22 Q And when you said here, "comply with the Voting Rights
23 Act," you specifically had in mind Section 2?

24 A Yes.

25 MR. PETERS: All right. I have no further questions.

1 Thank you very much.

2 THE COURT: Redirect?

3 MR. SPEAS: Just a couple of clarifying questions.

4 Thank you, Congressman Butterfield.

5 REDIRECT EXAMINATION

6 BY MR. SPEAS:

7 Q You were asked a series of questions about the 2001 Plan
8 measured both by Census 2000 data and then by Census 2010 data;
9 correct?

10 A Yes.

11 Q When a legislature enacts -- when the legislature enacted
12 the 2001 Plan, it only had the 2000 Census data; correct?

13 A That would seem to be logical. It was the following year,
14 yes.

15 Q And it did not have any 2010 Census data to submit to the
16 Department of Justice for Section 5 preclearance purposes?

17 A That is correct.

18 Q And only by peering into some crystal ball could the
19 General Assembly in 2001 guess what the numbers would be in
20 2010?

21 A That would be correct.

22 Q Okay. Now, one final question. All the years you've
23 spent in voting rights litigation, it is your understanding
24 that each district must be narrowly tailored to meet the
25 requirements of Section 2?

1 A One size fits all does not work in North Carolina, and I
2 don't believe would work in any southern state whatsoever. In
3 order to draw a fair map that meets the requirements of the
4 Constitution and the State Constitution, I believe that you
5 have to perhaps maybe not look at county-specific data, but at
6 least regional data.

7 Look at the north -- look at -- because even the
8 voting behavior between Durham and the other part of the
9 district is different. There's a lot of coalition building in
10 Durham. That was alluded to earlier. Polarization is -- I'm
11 not going to say nonexistent in Durham, but it's not as -- at
12 the level that it is in Halifax County. And so I believe that
13 any responsible map drawer should look at regional data in
14 order to determine the severity of the polarization in voting
15 and to narrowly tailor that map to meet that data.

16 Q Would it be accurate, Congressman Butterfield, that
17 Congress -- that Congressional District 1, as now configured,
18 includes a county, Durham County, where racially polarized
19 voting is probably among the least in the state; and at the
20 same time, Bertie County, for example, where racial polarized
21 voting may be higher?

22 A That's a good example, Mr. Speas. Durham County, which is
23 the county I spent many years of my formative life in as a
24 college student and as a law student, black leaders in Durham
25 fought some real tough battles over the years. And it grew out

1 of that a sense of working together in the political arena.

2 And even though there continue to be differences in
3 Durham between the racial groups, there is cohesion on many of
4 the political issues. And we don't have, in Bertie County of
5 Eastern North Carolina, that degree of cooperation.
6 African-Americans and whites like each other and get along, but
7 when it comes to the voting booth, their behavior is in stark
8 contrast.

9 Q To Durham?

10 A Sir?

11 Q To Durham County?

12 A In stark contrast to Durham County, yes.

13 MR. SPEAS: Thank you very much, Congressman.

14 THE WITNESS: Yes.

15 MR. PETERS: Your Honor, just one or two questions.

16 RECROSS-EXAMINATION

17 BY MR. PETERS:

18 Q Congressman Butterfield, Mr. Speas asked you about the
19 census data -- the 2000 Census data when the 2001 Plan was
20 adopted, and the General Assembly not having a crystal ball to
21 see what things were going to look like come the 2010 Census.
22 But would you agree that the 2000 -- applying the 2010 Census
23 to the 2001 District is useful in seeing what the population of
24 the district actually looked like by the end of the decade?

25 A It's good for an analysis. It's probative of reaching

1 what a fair district should look like. I would agree with
2 that, that the 2010 data when compared to the 2001 data is
3 probative in reaching a result, yes.

4 Q Do you know which census data the United States Justice
5 Department would have used in evaluating the benchmark for
6 Section 5 submission?

7 A I don't know.

8 MR. PETERS: I have nothing further, Your Honor.
9 Thank you.

10 MR. SPEAS: No questions, Your Honor.

11 THE COURT: You may step down.

12 (At 4:07 p.m., witness excused.)

13 MR. SPEAS: Thank you. May Congressman Butterfield
14 be excused?

15 THE WITNESS: Should I leave these exhibits?

16 THE COURT: Any objection to Congressman Butterfield
17 being excused?

18 MR. PETERS: Oh, no, Your Honor. We appreciate
19 Congressman Butterfield him being here and wish him safe
20 travels.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right.

23 MR. SPEAS: Your Honor, we would call our first
24 expert witness, Dr. David Peterson. Dr. Peterson, if you would
25 come around, please, and be sworn.

1 (Witness sworn by the clerk.)

2 MR. SPEAS: Your Honor, if I may, I have a collection
3 of witness notebooks.

4 THE COURT: All right.

5 MR. SPEAS: If I may, this notebook contains
6 documents that Dr. Peterson will be talking about. I hope I
7 have them in better order this time, Your Honor. There's three
8 of those for the judges and one for Mr. Farr, and the remainder
9 for the clerks. Oh, you need one. May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 DAVID PETERSON,

13 PLAINTIFF'S WITNESS SWORN AT 4:09 p.m.

14 DIRECT EXAMINATION

15 BY MR. SPEAS:

16 Q Dr. Peterson, would you state your name for the record,
17 please.

18 A Yes, my name is David West Peterson, P-E-T-E-R-S-O-N.

19 Q And would you review for the Court your educational
20 background?

21 A Yes. I have a bachelor's degree from the University of
22 Wisconsin, and master's and Ph.D. degrees from Stanford
23 University, all in electrical engineering.

24 Q And would you describe for the Court your work experiences
25 after receiving your Ph.D?

1 A Yes. After I got my Ph.D, I went into the Army for a
2 couple of years where I served at the Institute for Exploratory
3 Research at Fort Monmouth, New Jersey, doing basic research.
4 And then I took a faculty position at Northwestern University,
5 where I taught in the School of Management subjects,
6 statistics, operations, research, generally-applied
7 mathematics, computer applications, that sort of thing.

8 And then I took a professorship at Duke University,
9 where -- in the School of Business there. And I continue to
10 teach operations research, statistics, applied mathematics,
11 computer applications, and that sort of thing. And after I had
12 been there half dozen years or so, I got involved with
13 attorneys doing consulting work and helping with statistical
14 aspects of their cases, which led to the formation of a small
15 consulting firm. We did consulting and software development.

16 The firm was called PRI Associates. And in working
17 with them, I worked, I suppose, with 1,000 or so different
18 legal teams on various statistical issues, such as employment
19 discrimination, political redistricting, jury selection,
20 high-tech intellectual property disputes, and so forth.

21 Q Are you the author of any scholarly articles in
22 professional and academic journals?

23 A I'm coauthor of a book called *Use of Statistics in EEO*
24 *Litigation*. I'm sole author of another book on the use of
25 statistics and litigation, and I'm the author of several dozen

1 articles that have appeared in professional journals, refereed
2 professional journals.

3 Q And are your books about statistics and litigation now
4 in -- they've been out in a number of versions; is that
5 correct?

6 A Yes. My first book on the subject came out in -- I think
7 it was 1978, or thereabouts, and it's now in something like its
8 30th edition.

9 Q Okay. And have you qualified -- been qualified and
10 testified as an expert in any lawsuits?

11 A I have, in both state and federal courts.

12 Q And do you have an estimate of the number?

13 A Hard to say, but certainly at least 50 cases, and most
14 likely more.

15 Q And were you qualified and testified as an expert in the
16 *Cromartie* litigation concerning Congressional District 1 that
17 was litigated back in the 1990s?

18 A Yes.

19 Q Dr. Peterson, if you would turn to Tab 1 in the notebook
20 in front of you. Let me ask you if, at the -- toward the end
21 of Tab 1, there appears Appendix A, which is a longer version
22 of your qualifications and experience than you just described?

23 A Yes.

24 Q And is that accurate?

25 A It is, even though it bears a date from a couple of years

1 ago, it's essentially up to date. I haven't done much in the
2 last couple of years. I've been mostly retired.

3 Q Tree farming, I believe?

4 A Tree farming, yes.

5 MR. SPEAS: Your Honors, I would tender Dr. Peterson
6 to the Court as an expert in the field of applied mathematics.

7 MR. STRACH: No objection, Your Honor.

8 THE COURT: All right. Dr. Peterson then may testify
9 as an expert in the field of applied mathematics.

10 BY MR. SPEAS:

11 Q Dr. Peterson, would you describe for the Court the
12 analysis that you undertook for the plaintiffs in this case?

13 A Yes. I examined the 1st Congressional District and the
14 12th Congressional District, as presently constituted, and
15 addressed the issue of whether the borders of each appear to
16 have been constructed more for the purpose of collecting
17 Democrats within, or more for the purpose of collecting blacks
18 within.

19 Q And what conclusion did you reach with respect to those
20 two districts?

21 A Well, I did something that I call a segment analysis. And
22 what the segment analysis shows is that race better accords
23 with each of the two boundaries than does political party
24 preference.

25 Q In other words, race more than politics accounts for the

1 boundaries of Congressional 1 and 12?

2 A Yes, that's correct.

3 MR. SPEAS: My colleague, Mr. Hamilton, has informed
4 me that the document that Dr. Peterson is speaking from is
5 Plaintiff's Exhibit 15. I apologize for that. Thank you,
6 Mr. Hamilton.

7 BY MR. SPEAS:

8 Q Would you, Dr. Peterson, talk to the Court a little bit
9 about the concept of a segment analysis? What are you doing?

10 A Sure. A segment analysis arises from the following line
11 of thought: Let's suppose someone hands us a map with a
12 hand-drawn line on it along with a question of is there some
13 objective way that you could determine why that line was drawn
14 the way that it was? And if the line was drawn, let's say, as
15 an attempt at a contour line, we would expect that if we walk
16 along the path on the ground traced out by that line, that we
17 could reasonably expect to see that, most of the time at least.
18 The land is higher on the one side of the path than it is on
19 the other side of the path. And if we observe that that's the
20 case, that gives us some confidence that maybe the purpose
21 behind that line was that it was an attempt at drawing a
22 contour line.

23 Alternatively, if, as we walk along the path traced
24 out by that line, we see that, oh, say, the property on one
25 side of the line is under different ownership than property on

1 the other side of the line, that would give us some confidence
2 that perhaps the line was drawn as a boundary line depicting
3 ownership or separating ownership of the land.

4 The question that was posed to me, basically, was
5 here's the boundary of a political district. What can you say
6 about why it was placed just where it was? And, in particular,
7 can you say anything about whether it seems to have, built the
8 way it was -- have been built the way that it was for the
9 purposes of collecting blacks within; or does it seem -- is the
10 evidence stronger that it was built, perhaps, with the purpose
11 of collecting Democrats within? So that's the question that a
12 segment analysis attempts to address.

13 I'm going to walk along the boundary, at least in
14 concept, and basically look, first, at the issue of whether the
15 line seems to have been drawn for the purpose of collecting
16 Democrats inside. And if that's the case, what we should
17 expect to see as we walk along the line is that the
18 representation of Democrats on the inside of the path is
19 greater than the representation of Democrats on the outside.

20 On the other hand, if the line was drawn for the
21 purpose of collecting blacks within, we would expect to see as
22 we walk along that the representation of blacks on the inside
23 is greater than the representation of blacks on the outside.
24 And what a segment analysis does is, basically, go around the
25 boundary of each of the two districts and -- twice; once

1 looking at the representation of blacks inside and out, and
2 once looking at the representation of Democrats inside and out.

3 Q And Dr. Peterson, behind Tab 1, does there appear your
4 second affidavit marked Plaintiff's Exhibit 15; and I would ask
5 you whether or not that is the -- sets forth your results of
6 your segment analysis for Congressional District 12? Tab 1,
7 second affidavit.

8 A Yes, that is a description of my analysis -- my segment
9 analysis of the 12th District.

10 Q Would you, Dr. Peterson, walk the Court through that --

11 A Sure.

12 Q -- and explain it to them.

13 A Sure. A segment analysis, under the present
14 circumstances, is rather limited by the availability of data.
15 What we have at hand is precinct-by-precinct data on the
16 representation of Democrats among the population, and we have
17 precinct-by-precinct data on the representation of blacks
18 within the population. And as it happens, the boundary of the
19 12th District -- let me talk first about the 12th District --
20 pretty much follows precinct lines, so that as one walks along
21 the border of the 12th District, there is an inside precinct
22 and then an immediately adjacent outside precinct.

23 And as we progress along the boundary a little ways,
24 eventually, one of the precincts changes, either the inside
25 precinct changes or the outside precinct changes, and we enter

1 upon a new segment of the district boundary, the voting
2 district boundary.

3 And it happens, going precinct by precinct, the
4 boundary of the 12th District breaks into a total of 330
5 segments, each segment characterized by an inside precinct and
6 an outside precinct. And for each precinct, we can measure the
7 representation of blacks in that precinct, inside and outside,
8 and compare the two and determine which is greater.

9 And we can also compare the representation of
10 Democrats on the inside precinct and the outside precinct,
11 compare the two, and determine on which side of the path the
12 representation is greater.

13 The segments on which the -- for which the
14 representation of blacks on the inside is greater than on the
15 outside, I call Type B -- B for black -- segments. And the
16 segments for which the representation of Democrats on the
17 inside is greater, I call Type D segments, Democrat segments.

18 And as it happens, not too surprisingly, most of the
19 segments, most of the 330 segments are Type B segments, and
20 most are also Type D segments. And, in fact, most segments are
21 both Type B and Type D.

22 But the question here is, really, can one determine
23 whether there is more support, whether there's more evidence
24 that the boundary was placed for the purpose of collecting
25 blacks within or for the purpose of collecting Democrats

1 within. And to examine that issue, we have to look at the
2 segments which are not both Type B and Type D.

3 For example, if we have a segment that's Type B, but
4 not Type D, that is, blacks are represented inside to a greater
5 extent than they are represented outside, but Democrats are
6 represented outside to a greater extent than they are
7 represented inside, such a segment is consistent with the
8 hypothesis that race, to an extent, greater than political
9 considerations accounts for the placement of that segment or
10 that portion of the boundary of the 12th District. A segment
11 like that supports what I call the race hypothesis, that race
12 was more important than political affiliation in accounting for
13 the placement of that particular segment of the 12th District.

14 On the other hand, a segment might be such that the
15 representation of Democrats on the inside is greater than the
16 representation on the outside, but the representation of blacks
17 on the outside is greater than on the inside. And such a
18 segment I call a Type P segment because it supports the party
19 hypothesis more than it supports the race hypothesis.

20 And what I do, then, in a segment analysis is go
21 around and count up the number of Type B segments -- the number
22 of Type R segments, sorry, the ones that support the race
23 hypothesis, and the number of Type B segments, the ones that
24 support the party hypothesis over the race hypothesis. And the
25 results of those counts are shown in Table 1.

1 Q I'll put Table 1 up on the screen.

2 MR. SPEAS: And Table 1, Your Honors, is on page 6 of
3 Exhibit 26 -- Exhibit 15 under Tab 1. Table 1, Tables of
4 District 12 Segments By Race and Party Type.

5 A And I would like to direct the Court's attention, first,
6 to the first pair of numbers.

7 Q Is your pointer working?

8 A Well, no, actually.

9 Q Technical flaw.

10 A We'll try using words instead. Here we go. In the
11 northwest corner there, there's a pair of numbers, 6 and 8.
12 And those represent the results of one segment analysis. In
13 that particular analysis, there were six segments that were of
14 the race type; that is, they supported the race hypothesis over
15 the political hypothesis; and there were eight segments that
16 did just the opposite, supported the party hypothesis over the
17 race hypothesis.

18 But in doing that segment analysis, I used the entire
19 black population for purposes of measuring the race within each
20 precinct; that is, I noted the proportion of the entire
21 population associated with each precinct that were blacks.
22 Now, there are other ways, as has been brought out already
23 today in testimony, of measuring the representation of blacks.
24 One could use, for example, a black voting-age population.
25 Well, that's covered in the next line down.

1 If we use black voting-age population as a basis for
2 doing a segment analysis, in the first column there, the pair
3 of numbers, 7 and 7, show up underneath the first two that we
4 talked about. And that reflects the fact that for that
5 particular segment analysis, there were seven segments that
6 supported the race hypothesis and seven segments that supported
7 the political hypothesis. Same number of segments in each
8 case.

9 But as there are different ways of measuring the
10 representation of blacks, so, too, are there different ways of
11 measuring the representation of Democrats. And what was done
12 in the first column there is to base the representation of
13 Democrats on the percentage of registered voters in each
14 precinct who are registered as Democrats.

15 The next column over -- in fact, the next three
16 columns over are all based not on just voter registration party
17 identities, but rather, on behaviors of voters in actual
18 elections. So the next column over pertains to the 2008
19 gubernatorial election in North Carolina. The next column over
20 pertains to the 2008 presidential election in North Carolina.
21 And the final column -- ah, we have a cursor on the screen here
22 that may help -- thank you very much, Stacy. In the 2010
23 election, we have the senatorial election in North Carolina.

24 So we have four different ways of measuring the
25 representation of Democrats coupled with three different ways

1 of measuring the representation of blacks for a total of 12
2 different studies, 12 different segment analyses, the results
3 of all of which are presented in this one table.

4 Q Clarifying point, Dr. Peterson. So it's -- Table 1 sets
5 forth the results of not a single segment analysis, but 12
6 segment analyses?

7 A That's correct, yes.

8 Q Thank you.

9 A The same analysis repeated using different measures of
10 racial representation and different measures of representations
11 of Democrats.

12 I should mention that the final line in the table is
13 all based on the representation of blacks among registered
14 voters. That's the third way that I measured black
15 representation.

16 If you look over in the rightmost two columns, you'll
17 see going down there that, in every case, the number of
18 segments supporting the race hypothesis exceeds the number of
19 segments supporting the party hypothesis.

20 Looking at the first column on the left under the one
21 that we started at up in the northwest corner, we see that in
22 that instance, the race hypothesis is supported by six
23 segments, whereas the party hypothesis is supported by eight
24 segments. So, looking at the overall balance just with that
25 one study, there's more support in the segment analysis for the

1 party hypothesis, that the boundary was drawn for political
2 reasons rather than race.

3 The next line down, we noticed the balance was just
4 even, so there's a tie. The next line down, we know that,
5 again -- we see again that the balance tips in favor of the
6 political hypothesis.

7 Moving over to the next column, we see the same
8 pattern again. The top entry favors the political hypothesis.
9 The next entry down, there's an even balance. The third line
10 down, again, the balance tips in favor of the political
11 hypothesis. But in the last two columns in every single case,
12 the balance tips in favor of the race hypothesis. And
13 furthermore, it tips more extremely in favor of the race
14 hypothesis in each of those six cases than in any of the cases
15 in which it tips in favor of the political hypothesis.

16 Viewed as a whole, Table 1 indicates that there's
17 more support for the race hypothesis than for the political
18 hypothesis.

19 Q Thank you, Dr. Peterson. For just a minute, I'd like you
20 to focus on the segment analysis, comparing the 2008
21 presidential results with three different measures of the black
22 population. Is it true that in every one of those analyses,
23 the race hypothesis better explains the boundary of the
24 district than the party hypothesis?

25 A Yes, that is true.

1 Q Okay. Now, Dr. Peterson, did you repeat this segment
2 analysis for Congressional District 1?

3 A Yes, same analysis, but, of course, different data.

4 Q And if you would turn to page 2 of the notebook in front
5 front of you, there appears your fourth statistical report
6 marked Plaintiff's Exhibit 16. And I would ask you,
7 Dr. Peterson, if that sets out your segment analysis for
8 Congressional District 1?

9 A Yes, it does.

10 Q And would you describe for the Court that study.

11 A Yes. This is the same analysis that I did for the 12th
12 District, except I did it for the 1st District.

13 Q And are the results of your study for Congressional
14 District 1 set forth in Table P5.1 --

15 A Yes.

16 Q -- appearing on page 6 of Plaintiff's Exhibit 16 and now
17 on the screen?

18 A Yes, that is correct.

19 Q Okay. And would you review with the Court the results set
20 forth in Table P5.1 on page 6?

21 A Yes. The -- again, there wasn't just one segment analysis
22 that was done. There were 12 analyses done using three
23 different measures of racial representation -- of black
24 representation, rather, and four different measures of the
25 representation of Democrats. And what you see there is that in

1 the first column, in every single instance, the race hypothesis
2 is more strongly supported than the political hypothesis.

3 And in the last column, in every single case, the
4 race hypothesis is supported more strongly than the political
5 hypothesis. And in the bottom row, which overlaps the first
6 and last columns, the same is true.

7 Only for the four studies sort of in the middle upper
8 central part of the table is there a departure from this
9 pattern. And, in the second column, the top pair of numbers, 8
10 and 9, show that there's slightly more support for the
11 political hypothesis than for the race hypothesis.

12 And the next one down, the 7 and the 8, show that,
13 again, there's slightly more support for the political
14 hypothesis than for the race hypothesis.

15 And then moving over to the next column, looking at
16 the first two rows, we see there are two ties there; in the
17 first instance, eight segments supporting the race hypothesis
18 over the political hypothesis, and eight segments supporting
19 the political hypothesis over the race hypothesis. And the
20 next line down is 6 and a 6.

21 So, overall, there are eight instances in which the
22 segment analysis comes out more strongly in favor of the race
23 hypothesis than the party hypothesis, two instances in which
24 there's a tie, and two instances in which the political
25 hypothesis is ever so slightly favored over the race

1 hypothesis. Again, in every instance in which the race
2 hypothesis has more support than the political hypothesis, the
3 degree of imbalance is greater than in any instance in which
4 the political hypothesis has more support than the race
5 hypothesis.

6 Overall, I think you have to say that Table P5.1, the
7 segment analyses, are more strongly supportive of the race
8 hypothesis than they are of the political hypothesis.

9 Q So is it correct, Dr. Peterson, that based on your segment
10 analysis for Congressional District 1 and Congressional
11 District 12, as enacted by the defendants in 2011, you conclude
12 that the race hypothesis better accounts for the boundary of
13 both districts than the political hypothesis?

14 A Yes, that is correct. And I should point out, I think,
15 that this is not the first time I've ever done a segment
16 analysis.

17 Q I wanted to talk just a little bit about that. You did
18 this once before, I believe?

19 A I have, yes.

20 Q And could you explain to the Court the circumstances under
21 which you undertook to do a segment analysis and what you
22 found?

23 A I did this in connection with a *Cromartie* litigation in
24 the Wake of the 1990 Census. And again, it was the 12th
25 District which was being challenged. And the results that I

1 found in that instance were just the opposite of what I found
2 this time. So I found that there was more support for the
3 political hypothesis than for the race hypothesis.

4 Q And do you -- are you aware of the black voting-age
5 population percentage in the version of Congressional District
6 12 you were examining in the *Cromartie* legislation --
7 litigation?

8 A No.

9 Q Okay. Now, Dr. Hofeller, I believe, undertook to respond
10 to your segment analysis for Congressional District 12; is that
11 correct?

12 A Yes.

13 Q And is that set out at Tab 3 of of your witness notebook,
14 which is the affidavit of Thomas Hofeller, or the portion of it
15 that Mr. Hofeller filed in the *Dickson* matter on January 9,
16 2012?

17 A Yes.

18 Q And can you describe for the Court the response
19 Dr. Hofeller made to your analysis of Congressional 12?

20 A Yes. Dr. Hofeller responds just to my second affidavit,
21 the one that addresses District 12. So far as I'm aware, he
22 has made no response to my analysis of District 1.

23 His response to my analysis begins on page 17 of his
24 affidavit, in paragraph 45, and pretty much runs to the end of
25 that affidavit. And it seems to me that the real meat of his

1 response is contained in his paragraph 59 on page 21. And his
2 paragraph 59 rests on an analysis of the data shown in his
3 Appendix 2.

4 Q And can we put Appendix 2 on the -- thank you.

5 Is this Appendix 2 from --

6 A Yes, it is.

7 Q -- Mr. Hofeller's response?

8 A Yes.

9 Q And can you use that to explain his response?

10 A Sure -- well, yes, as best I understand it. What
11 Dr. Hofeller does is to distinguish three different geographic
12 areas. There's a geographic area that is in both the old
13 version of District 12 and in the new. It's what he refers to
14 as -- well, an area in the new and the old 12th. You might
15 think of it, I suppose, as some sort of core area.

16 And then there's an area that is only in the old 12th
17 District but not in the new, so it was taken out of the 12th
18 District in the process of forming the new. And then there's
19 an area that's only in the new, something which was not in the
20 old, but now it's in the new.

21 And for each of these areas, in Appendix 2,
22 Dr. Hofeller supplies some data, on the one hand, the
23 representation of blacks in that area; and on the other, the
24 representation of Democrats based on the 2008 presidential
25 election.

1 And what he does is to note in a central column here
2 that the representation of black voting -- representation of
3 blacks among the voting-age population in the first of these
4 districts, the core district, the part that's in the old 12th
5 District and also in the new, that the representation of blacks
6 among the voting-age population is 54.22 percent. And then
7 underneath that, that the representation of blacks among the
8 voting-age population only in the old 12th District, but not in
9 the new, is 22.77 percent. And then underneath that, that the
10 representation of blacks only in the new portion of the 12th
11 District but not in the old is 43.24 percent. And then
12 underneath that, he shows 20.47 percent, which is the
13 difference between the 43.24 percent and the 22.77 percent.

14 So we'll hold that thought and move on to the
15 analogous data here for the representation of Democrats. And
16 what he shows in this table is that in the core area, the
17 representation of Democrats as measured by the presidential
18 election in 2008 was 79.92 percent. The representation of
19 Democrats only in the old 12th District was 53.01 percent. And
20 that the representation of Democrats in the new part of the
21 12th District is 75.39 percent. And, again, underneath that,
22 there is a percentage shown, 22.38 percent, which is the
23 difference between 75.39 percent and 53.01 percent.

24 Now, by some process, which is not entirely clear to
25 me, Dr. Hofeller reaches the conclusion stated in the last

1 sentence of his paragraph 59, which is, quote:

2 "The only political decision which one can perceive
3 by the desire to place the lower performing VTDs into the 12th
4 District is an attempt to submerge Republican vote in a safe
5 Democrat seat."

6 I have to confess, I don't see how he gets there from
7 the data in Appendix 2. And, indeed, I don't even understand
8 what that conclusion means, but --

9 BY MR. SPEAS:

10 Q Did you undertake to examine Dr. Hofeller's response to
11 your Congressional 12 affidavit?

12 A Well, as I interpret Appendix 2, it was meant for us
13 somehow to look at the 20.47 percent and the 22.38 percent and
14 come to some sort of conclusion. And the only conclusion that
15 leaps out at me is that, in taking out part of the
16 12th District and replacing it with a new piece of North
17 Carolina not previously in the 12th District, this had the
18 effect of increasing the representation of blacks by this
19 20.47 percent.

20 That's really not a percentage increase, but it's a
21 difference in the two representations that I've already
22 described the calculation of. But it also had the effect of
23 changing the representation of Democrats in the 12th District.
24 And the difference calculated, analogously, is 22.38 percent.

25 And it seems to me that the comparison that's invited

1 here is the 22.38 percent against the 20.47 percent. And
2 maybe, what we're supposed to observe here is that the
3 22.38 percent being greater than the 20.47 percent, we should
4 infer that it was politics more than race that influenced the
5 creation of the new 12th District.

6 And if that is the right interpretation, that's a
7 false conclusion for reasons which I hope presently to
8 demonstrate.

9 Q And do you explain why that is a false conclusion in your
10 third affidavit, which appears after Tab 4, and which is marked
11 as Defendant's Exhibit D118?

12 A Yes.

13 Q And would you explain for the Court what is set forth in
14 that third affidavit?

15 A It may be most expeditious to look at Table P3.1 at least
16 briefly.

17 Q And that's now on the screen. And Table P3.1 appears in
18 that report as -- at the end as immediately following your
19 signature page; correct?

20 A Yes, immediately following page 7.

21 Q Could you explain what appears on Table P3.1?

22 A Yes. What appears on -- one of the things that we learned
23 from the segment analyses, both of the 1st District and the
24 12th District, is that it makes a difference how you measure
25 black representation or how you measure the representation of

1 Democrats in a precinct.

2 And so what I've done in Table P3.1 is just to take
3 Dr. Hofeller's Appendix 2 table, which measures race only one
4 way and measures Democrat percentages only one way, and expand
5 it to measure race three different ways, the three ways that
6 were used in the segment analysis, and political affiliation
7 four ways, the four ways that are used in the segment analysis,
8 instead of just the one way that's used in Appendix 2.

9 And the reason why I said maybe we'll just look at
10 Table P3.1 briefly is that it's a mess. There's a lot of data
11 there, and it's very difficult to pick stuff out. So I suggest
12 we segue to Table P3.2, which is now on the screen, and which
13 appears immediately after P3.1 in your affidavit.

14 A Yes.

15 Q Can you describe for the Court --

16 A Yes. In Table P3.2, what I've done is, essentially, 12
17 different versions or 12 different variations on the study that
18 I think Dr. Hofeller presents in his Appendix 2.

19 So, once again, there are 12 entries there
20 corresponding to the three different ways of measuring the
21 representation of blacks and the four different ways of
22 measuring the representation of Democrats that we encountered
23 previously in connection with segment analyses.

24 And, in each case, in the body of the table, I've
25 entered a P if the comparison afforded by the -- by parallel

1 analysis of Dr. Hofeller's Appendix 2 supports the party
2 hypothesis over the race hypothesis. And I've entered an R
3 where the opposite is true, where doing the type of analysis
4 that I attribute to Dr. Hofeller, in his Appendix 2, it turns
5 out that the comparison of the two percentages is such as to
6 favor the race hypothesis over the political hypothesis. And
7 the percentages being compared are shown in that table across
8 the top there, the 16.49 percent, the 22.38 percent, the
9 19.64 percent, and the 25.31 percent, all being percent --
10 percent representations of Democrats.

11 And going down the left side of the table, the
12 21.46 percent, the 20.48 percent, and the 25.17 percent being
13 the representations -- changes in the representations of
14 blacks. And the comparison of the percentages shown in the
15 column headings and the percentages shown in the row headings
16 gives rise to the R or P in the body of the table.

17 And, as we look across this table, we see that in
18 five instances, there are Ps, and in seven instances, there are
19 Rs, which is to say the -- on balance, the evidence here would
20 seem to tip in favor of the race hypothesis over the political
21 hypothesis.

22 Q And what, Dr. Peterson, is displayed in Table P3.3
23 immediately below?

24 A Well, that's another analysis of almost the same type,
25 except that if we could go back to -- if we could go back to

1 Appendix 2 for a minute, I want to point something out.

2 Q Do we have -- Appendix 2 is now on the screen.

3 A Here we are. Okay. And what I would like to point out is
4 that when we were calculating the difference in representation
5 of blacks, what we did was to -- in that table and looking at
6 the column pretty much in the middle of the table, what we did
7 was to subtract 22.77 percent from 43.24 percent, coming up
8 with the 20.47 percent. Well, that's one way of measuring the
9 differences between two percentages, but there's lots of other
10 ways.

11 And one of the most common is to take the ratio.
12 Suppose we divide the 43.24 percent by 22.77 percent and see
13 what percentage there has been an increase in the
14 representation of blacks. And suppose we do the same thing
15 with respect to Democrats. In the rightmost column, what we'll
16 do is instead of subtracting one percentage from the other,
17 we'll take the ratio of the 75.39 percent to 53.01 percent and
18 use that as a measure of the difference between those two
19 percentages.

20 Q And are the results of that --

21 A And if you -- if you repeat the analysis that I reported
22 on in Table P3.2, using percentage increases instead of simple
23 difference increases, you get Table 3.3.

24 Q And it's back on the screen -- okay. It's back on the
25 screen.

1 A And it's back on the screen now. Again, the percentages
2 are arrayed across the top and down the left side of the table.
3 You compare those two at a time, and register a P or an R in
4 the body of the table depending as the percentage in the row is
5 greater or less than the percentage in the column. And, my
6 goodness, in every single case, the race hypothesis is -- has
7 more support than the political hypothesis.

8 Q Dr. Peterson, at the end of the day, after analyzing --
9 conducting this analysis of Congressional District 12, the
10 segment analysis, in the application of your expertise in
11 applied mathematics, what is your view with regard to the
12 question whether race or politics better accounts for the
13 boundary of Congressional 12?

14 A Well, the segment analysis shows that with respect both to
15 the 1st District and to the 12th District, that there is more
16 evidence that -- there's a better correlation with race than
17 with political considerations in the placement of the boundary.

18 The -- my re-analysis of Dr. Hofeller's Appendix 2
19 indicates, in the first instance, the 12 studies that are
20 reported in Table 3.2, that on balance, there's more support
21 for the race hypothesis than the political hypothesis. And in
22 Table P3, which reports on another dozen analyses based on
23 Dr. Hofeller's Appendix 2, that, once again, race better
24 accounts for the boundary than the political hypothesis.

25 MR. SPEAS: Thank you, Dr. Peterson. No more

1 questions at this time.

2 THE COURT: Cross-examination?

3 MR. STRACH: Thank you, Your Honor. Good afternoon,
4 Dr. Peterson.

5 THE WITNESS: Mr. Strach.

6 MR. STRACH: Yes, Phil Strach for the defense. We've
7 met, it's been several years now, in your deposition; is that
8 correct?

9 THE WITNESS: That's right, yes.

10 MR. STRACH: I've got just a few questions for you
11 about your analysis.

12 CROSS-EXAMINATION

13 BY MR. STRACH:

14 Q I want to focus, first of all, though, on making it clear
15 in my mind what you are not concluding.

16 A Okay.

17 Q Based on a review of your reports, you are not saying, are
18 you, that if race, quote: "Better accounts for the boundary"
19 of the 12th or the 1st, that therefore, race predominated or
20 was the motivating factor for the district?

21 A That's correct, I am not saying that.

22 Q All right. And it's also fair to say, isn't it,
23 Dr. Peterson, that you're not drawing any conclusions about a
24 causal effect between what the map drawer was doing and what
25 was -- and the motive. You're drawing a correlation, not

1 causation; is that correct?

2 A That's right. What I'm looking at is an effect. I'm not
3 opining as to why that happened the way that it did.

4 Q All right. Now -- and that's important, I think, because
5 it's true, isn't it, Dr. Peterson, that you've never actually
6 drawn a redistricting map; isn't that right?

7 A I have participated in the redistricting process, but not
8 at the point of actually drawing districts.

9 Q All right. And at least as of the time that we had our
10 deposition together, you were not familiar with a computer
11 program called Maptitude; is that correct?

12 A Not familiar enough to be able to use it. I may have seen
13 it on a lab visit that I made, but I'm not -- I'm not familiar
14 with it to the point that I could actually use it.

15 Q Okay. And is it your understanding that, at least in this
16 particular case, it was the computer program Maptitude that was
17 used by Dr. Hofeller to draw these districts?

18 A I don't have an understanding on that point.

19 Q All right. And let me make sure I understand the way you
20 conduct your segment analysis. If I am correct, your analysis,
21 as you said, walks around the boundary of the district; is that
22 right?

23 A Conceptually, yes.

24 Q All right. And you understand, don't you, Dr. Peterson,
25 that when a map drawer draws a district, they do not draw it in

1 a sequential manner like that?

2 A Well, yes and no. The person who constructed both the
3 12th District and the 1st District was obviously working with
4 precinct-sized chunks of North Carolina, because the
5 boundaries, in so many instances, follow precinct lines, not
6 all instances, but in many instances. So it's pretty clear
7 that precincts figured in the creation both of the 12th and of
8 the 1st District, but I can't say that the focus of the person
9 who was constructing the map was on segments and their inside
10 and outside precincts.

11 Q In other words, it's probably pretty unlikely that the map
12 drawer or a map drawer would draw one segment of a district and
13 then analyze it for race versus party, and then proceed to the
14 next district and so forth in drawing the district.

15 A Not exactly that way. I think it's more likely that the
16 voting district drawer would consider the inclusion of a
17 precinct within or perhaps consider exchanging it with another
18 precinct or something like that. I think precincts loomed
19 large in the decision process, but exactly how they were used,
20 I can't say.

21 Q And your analysis looks at each -- I think what you called
22 inside precinct, and then compares it to the precinct
23 immediately on the outside of the boundary; correct?

24 A Yes.

25 Q But when someone's drawing a map, they may very well pick

1 one precinct at the southern part of the district in exchange
2 for a precinct at the top part of the district?

3 A They might, yes.

4 Q So when a map is actually being drawn, it's not
5 necessarily a one-to-one inside versus outside choice?

6 A That's correct.

7 Q And your analysis assumes a binary choice for the map
8 drawer when selecting the precinct?

9 A Not really. What it's looking at is an overall pattern.
10 And, in that sense, it's much like the calculation of a
11 correlation.

12 MR. STRACH: Okay. Your Honor, I'm about to go into
13 another line that could take us a while, and I'm happy to do
14 that at your --

15 THE COURT: One second. Keep on going for a while
16 longer.

17 MR. STRACH: All right. Thank you, Your Honor.

18 BY MR. STRACH:

19 Q Dr. Peterson, could you explain to the Court the concept
20 of -- we talked about this at your deposition, called -- let me
21 find it in my notes here, Forensic Decision Analysis?

22 A Sure. I wrote a book about Forensic Decision Analysis.
23 And it's a -- it's an approach to trying to figure out why
24 decisions were made the way they were after the fact.

25 Q Is your segment analysis a species of this Forensic

1 Decision Analysis?

2 A It is, but it's -- but it's a better illustration of the
3 kind of compromise sometimes one has to make with a good
4 Forensic Decision Analysis to apply it in practical
5 circumstances. It's not a very good example of a Forensic
6 Decision Analysis or at least an ideal Forensic Decision
7 Analysis.

8 Q Right. And that's because with a Forensic Decision
9 Analysis, ideally, you're able to account for all of the
10 alternative decisions that were available to a decision-maker
11 in evaluating what motivated the decision; is that right?

12 A Yes.

13 Q And in your segment analysis, it's not possible for you to
14 have accounted for all the many other factors or variables that
15 a map drawer had to think about when choosing to select or
16 deselect a particular precinct?

17 A That's correct. And part of the difficulty is the
18 unavailability of data. We have data only at the precinct
19 level. And even what's available at the precinct level is
20 pretty much in summary form. So there's a limit to how close
21 we can actually get to the decision process in a segment
22 analysis.

23 Q All right. So, for instance, if the map drawer with
24 respect to, say, District 12 is trying to accomplish a
25 political result in four or five of the surrounding districts

1 to that district, your segment analysis can't perfectly capture
2 the extent to which that political goal factored into the
3 boundary?

4 A That's correct. All I'm doing is measuring sort of an
5 overall correlation. I'm looking at the result, not the
6 process.

7 Q Okay. Let's talk about -- well, let me actually go back
8 to the *Cromartie* case and your analysis in the *Cromartie* case.
9 I want to make sure that this is clear to the Court. In the
10 *Cromartie* case, you were hired by the State --

11 A Yes.

12 Q -- at that point in time; right?

13 A Yes.

14 Q And the State, in that case, was trying to defend the 12th
15 District from a racial gerrymandering claim much like this one;
16 correct?

17 A That's correct.

18 Q And you were hired -- were you hired by Mr. Speas in that
19 case?

20 A I don't recall who actually hired me, but I worked with
21 Mr. Speas in that case.

22 Q All right. In that case, your analysis produced a result
23 that was favorable to the position Mr. Speas's client was
24 taking in the case?

25 A Yes.

1 Q And that particular conclusion was that race couldn't have
2 predominated because politics was a, quote, "better explanation
3 for the district"?

4 A Yes.

5 Q All right. So --

6 A Well, I don't know that I reached the conclusion that race
7 couldn't have predominated. What I showed was that, according
8 to a segment analysis, politics was a better explanation for
9 the boundary than was race.

10 Q And in that case, you understood that the burden was on --
11 the State simply had to show that something else better
12 explained the district in that case; is that correct? In other
13 words --

14 A Could you rephrase the question?

15 Q You were working on this side of the aisle in that case --

16 A Right, that's true.

17 Q -- right? And so, what you had to show, the burden wasn't
18 on the State. You just simply had to show --

19 MR. SPEAS: Your Honor, objection. He's questioning
20 him about a legal matter.

21 THE COURT: Yeah, I agree. Let's rephrase the
22 question.

23 MR. STRACH: All right.

24 THE COURT: I think it's getting a little confusing
25 in terms of an applied mathematics expert talking about burdens

1 of proof in a courtroom.

2 THE WITNESS: Right. I'm not a lawyer.

3 THE COURT: Hold on just a second.

4 THE WITNESS: Sure.

5 THE COURT: I'm not sure a foundation's been laid
6 enough to get into something along this --

7 MR. STRACH: All right. Thank you, Your Honor.

8 THE COURT: -- at least as the question was framed.

9 BY MR. STRACH:

10 Q I think -- so I'll just leave it at in that particular
11 case, though, you were working on the behalf of the State; is
12 that correct?

13 A Yes.

14 Q And in this particular case, though, you were working on
15 behalf of the challengers challenging the claim --

16 A That's correct, yes.

17 Q -- is that correct? All right. Thank you. All right.
18 Let's look at District 12, Dr. Peterson.

19 A Okay.

20 Q I want to focus on that. And I want to look at, first of
21 all, you mentioned in your testimony with regard to the 12th
22 District, I believe that the way you call it in your report is
23 there's 330 pairs?

24 A Well, 330 segments, which means 330 pairs of precincts.

25 Q Okay. And out of those 330 segments, sort of going around

1 the 12th District, you could only use 29; is that correct?

2 A I don't have a figure in mind, but that's about right.

3 Q All right. And that's because in the vast majority of
4 those pairs or those segments, you couldn't make a
5 determination of race versus party based on the data you had?

6 A That's right. There was a lot of -- most of the pairs, 80
7 to 90 percent of the pairs were both type -- what I call Type B
8 and Type D pairs; that is, the representation of blacks was
9 greater inside than outside, and the representation of
10 Democrats was greater inside than outside for most of the way
11 around both of those boundaries.

12 Q And Dr. Peterson, are you familiar with a concept called
13 multicollinearity?

14 A I am, but I don't see how that applies under these
15 circumstances.

16 Q Do you agree with me that, in North Carolina, there's a
17 high correlation between race, including black, and
18 registration in the Democratic Party?

19 A I believe there is, yes.

20 Q And also voting behavior, there's a high correlation
21 between race being black and voting for Democrat candidates?

22 A Yes.

23 Q All right. And so, is it likely that you could only look
24 at 29 out of the 330 segments because there's such a high
25 correlation of multicollinearity between race and party in

1 North Carolina with respect to blacks and Democrats that it
2 significantly reduced the population of segments that you could
3 look at?

4 A To me, "multicollinearity" means something quite different
5 from that. But, I think, just put in simple words, it is true
6 that for most of the way around the boundary, both the 12th
7 District and the 1st District, blacks are represented more
8 heavily inside than outside, and so, too, are Democrats.

9 Q All right. So in your second affidavit, which, I believe,
10 is P15, which I think is behind Tab 1 in your notebook,
11 Dr. Peterson, if you could pull that out.

12 A Sure.

13 Q I want to take a look at your chart in paragraph 14. And
14 we, in your direct testimony -- are you there? Tab 1, it
15 should be page 6.

16 A Yes.

17 Q And in that chart, you tallied up the results of the 12
18 studies; correct?

19 A Yes.

20 Q And so, there are 12 results, and each result is either a
21 P, or an R, or it's tied; is that correct?

22 A In effect, yes. I didn't actually record Ps and Rs here,
23 but --

24 Q Right. And that's what I want to -- I want to look at the
25 Ps -- I know they're not in your report, but I want to look at

1 the actual number of Ps and Rs.

2 A Sure. Let's do it.

3 Q Okay. So, when I look at this chart, I tally up -- and
4 you tell me if I'm wrong -- that there are six Rs all together?

5 A Yes, that's right.

6 Q Okay. So six studies in which you would contend that race
7 was the better hypothesis?

8 A Yes, there's more support for the race hypothesis than the
9 political hypothesis.

10 Q All right. And then, of the 12, as I count them, there
11 are four Ps; is that correct?

12 A Yes, that's correct.

13 Q And then, there are two that are neutral, or tied?

14 A Yes.

15 Q All right. So, in all of the 12 studies for the 12th
16 District and your segment analysis, what you have actually are
17 six in which the race hypothesis, you say, is -- better
18 accounts for it, but six where race was not the better
19 hypothesis; is that correct?

20 A That is true.

21 Q All right. And then, Dr. Peterson, if you would explain
22 to the Court -- there's a paragraph in your affidavit here
23 about it. Would you explain to the Court what you mean by an
24 unequivocal pair?

25 A Yes. There are some segments that no matter how you

1 measure race and no matter how you measure party affiliation,
2 turn out to be either Type R segments, that is, they support
3 the race hypothesis over the political hypothesis; or they turn
4 out to be Type P, they support the political hypothesis over
5 the race hypothesis. But their number is very small; there's
6 one of each.

7 So, in common with all 12 of these studies, there is
8 one segment in the 12th District which is, in every study, a
9 Type R segment, and there is one segment which is, in every
10 single study, a Type P segment. One of each.

11 Q Okay. So in those instances, the data is unequivocal as
12 to one or the other?

13 A I'm -- well, I would say they are equivocal with respect
14 to the two hypotheses. There's equal support for the two.

15 Q Okay. And that's the point. So, where you look only at
16 the unequivocal pairs, one being a P and one being an R, then
17 you would have to conclude with respect to those that race and
18 party are equal explanations?

19 A If that was the only thing I knew about it, that is the
20 conclusion I would reach --

21 Q All right.

22 A -- but I happen to know more.

23 Q Right. Okay. And let's look at some of the more. Let's
24 look at your third affidavit, which is -- I believe it's behind
25 Tab 4. And, in particular, I want to look at Table 3.2 that

1 you looked at with Mr. Speas.

2 A I've got it.

3 Q Got it? All right. Are you aware, Dr. Peterson, of
4 testimony by Dr. Hofeller in the *Dickson* case, the State case,
5 that when the 12th District was being drawn, the data that was
6 being used to draw that was voting -- black voting -- or
7 voting-age population and the percent of Obama-McCain vote?

8 A I don't know that I'm acquainted with that testimony, but
9 that is the import, I think, of his Appendix 2.

10 Q Right. Okay. That being that when one looks at the
11 percentage of Obama vote in the selected precincts that -- in
12 his Appendix 2, the percentage of Obama -- the Obama percentage
13 was higher than the race percentage; correct?

14 A Yes --

15 Q Okay.

16 A -- in Table P3.2, not in Table P3.3.

17 Q Right. Now, in Table P3.2, I'm not sure it was shaded on
18 the version that was on the computer earlier, but in the actual
19 affidavit, Dr. Peterson, I believe you shaded a particular unit
20 on Table P3.2; is that correct?

21 A I did, and it hasn't come through on the copies, but I can
22 tell you what should have been shaded, what, in fact, was
23 shaded.

24 Q All right. The one that should have been -- was shaded in
25 your original report was the bloc that is the intersection of

1 the row of voting-age population and the column of percent
2 Obama; correct?

3 A Yes, that is correct.

4 Q And in that particular bloc, your study concluded that
5 party was the better indicator?

6 A Well, I would attribute the study to Dr. Hofeller, but,
7 yes.

8 Q So when you look at the data that Dr. Hofeller said that
9 he looked at in drawing the 12th District, then your data shows
10 that party is the better explanation; is that true?

11 A In the Table P3.2 analysis, not in the Table 3.3 analysis.

12 Q All right. And now, let's look at Table 3.3. In Table
13 3.3, what you did was you converted Dr. Hofeller's data to
14 ratio; is that correct?

15 A Yes, as an alternative way of measuring the difference
16 between two numbers.

17 Q All right. And what evidence do you have that converting
18 those numbers to ratios is more reliable or valid?

19 A There's -- I can't say that one is more reliable or valid
20 than the other. They're just two different ways of looking at
21 the same data.

22 Q All right. And the way you did the data happened to
23 support your theory of the case; correct?

24 A It happened to. I didn't know it was going to before I
25 did it.

1 Q All right. Let's focus for a moment on the 1st District.
2 Let's turn back to your fourth affidavit, which, again, I
3 believe -- well, it's a different one. I believe that's under
4 Tab 2 in your notebook, Dr. Peterson?

5 A Yes.

6 Q And in particular, I want to look again -- first of all,
7 let's talk about those unequivocal pairs again, segments.

8 A Yes.

9 Q Isn't it true that with regard to the 1st District, again,
10 you found two unequivocal pairs, and one was P and one was R?

11 A I have to look at the affidavit to see because --

12 Q Sure. If you look at paragraph 16 --

13 A Paragraph 16, right. Yes. One of each.

14 Q Okay. So as with the 12th District, with the 1st
15 District, when you looked only at the data that was segments
16 that were unequivocal, they basically cancelled each other out,
17 race versus party?

18 A That's right, yes.

19 Q All right. Okay. And then let's look at --

20 MR. STRACH: Excuse me for a moment, Your Honor.

21 Okay.

22 BY MR. STRACH:

23 Q If we look, Dr. Peterson, at -- this is your fourth
24 affidavit, page 6. And, again, this is your Table P5.1 on
25 page 6.

1 A Got it.

2 Q All right. So, again, if you try to find the intersection
3 here in this chart, the study that represents the intersection
4 between voting-age population and votes for the -- in the
5 presidential race; right?

6 A Yes.

7 Q Black voting-age population is in the middle, 2008
8 president is a column second from last. And if you trace the
9 intersection of those two pieces of data, that study showed
10 that race and politics were tied; is that correct?

11 A Yes.

12 Q Dr. Peterson, let me talk a little bit about the mechanics
13 of -- and in particular, talking about the 12th Congressional
14 District, talk about the mechanics of constructing the
15 district. When I -- if I use the term "Transit VTD," do you
16 have any idea what that means?

17 A Not exactly, but as you talk, I may develop an
18 understanding.

19 Q All right. So, if you have a population in the district
20 in the north and a population in the district in the south,
21 you've got to connect the two somehow; is that correct?

22 A If they're going to be in the same district, yes.

23 Q Right. And that goes back to the fact that, sometimes,
24 decisions up here affect decisions down here, and then you've
25 got to connect the two; is that fair?

1 A Yes.

2 Q Do you -- did you attempt to do any analysis or does your
3 segment analysis account at all for decisions that have to be
4 made in terms of which -- choosing a corridor or transit VTDs
5 to go from one population to another?

6 A No, it just looks at the overall result, doesn't look at
7 the process.

8 Q All right. And then, when you were deciding which VTDs or
9 segments would be a P versus an R, you actually started by
10 looking at which segments, which would be a B versus a D --

11 A Yes, that's correct.

12 Q -- black versus Democrats; is that right? And as I
13 understand the analysis, you decided whether it was a B or a D
14 by adding up, say, the number of Democrats inside -- the inside
15 VTD and subtracting the number of Democrats from outside the
16 VTD; is that fair?

17 A No, that's not right.

18 Q Explain to the Court how you did that.

19 A Sure. What I did was to look to the inside to see what
20 the representation of Democrats was; that is, among, let's say,
21 registered voters, what percentage of people residing in the
22 inside precinct were registered as Democrats among the totality
23 of voters who were registered.

24 And then, I did a similar thing for the outside
25 precinct. And I compared those two percentages, the two

1 representations, degrees of presence of Democrats. And then I
2 did the analogous thing for blacks.

3 Q And you looked at which one was higher?

4 A And I just looked at which one was higher, yes.

5 Q Okay. And you just looked at the raw numbers; correct?

6 A And determined which of the numbers was greater, inside or
7 outside.

8 Q It didn't matter if it was even greater just by one?

9 A That's right.

10 Q So even by one person could determine --

11 A Well, one -- one percentage say.

12 Q Okay. One percentage could determine a segment's fate of
13 being labeled a B versus a D?

14 A Yes, that's true.

15 Q All right. And you could have -- if you had wanted to,
16 you could have weighted the percentages instead of taking the
17 raw data; correct?

18 A Could have done? I can't think of any reason why the
19 results would be more meaningful or reliable than the results
20 obtained the way I did it.

21 Q But you didn't do a weighted percentage?

22 A I told you everything I did. I didn't do anything else.

23 Q All right. Now, your segment analysis is also not able to
24 take into account decisions that are made by the map drawers
25 with regard to protecting incumbents?

1 A That's right. Again, I didn't look at process. What I've
2 done is just look at the overall result.

3 Q And you don't try to account for the impact of under or
4 overpopulation in a district?

5 A Well, not explicitly. Again, I assume some account was
6 taken of over or underpopulation in the choice of precincts to
7 include or exclude. But, again, I didn't look at process. The
8 segment analysis looks only at overall result.

9 Q All right. You don't make any attempt to try to control
10 for things like under or overpopulation?

11 A That's right. I didn't try to reconstruct the decision
12 process in its detail.

13 Q Okay. And it's also true, Dr. Peterson, that you did not
14 do any segment analysis for the alternative or competing plans
15 that were introduced in the legislature for -- certainly for
16 Congressional Districts?

17 A That's right. The only segment analysis I've done in
18 connection with this litigation are the two on which I have
19 reported.

20 Q All right. So we have no frame of reference in terms of
21 other plans and how they might have fared with the 12th and 1st
22 Congressional District?

23 A Would you repeat the question, please?

24 Q So we don't have a frame of reference for how the enacted
25 plans might have fared compared to a segment analysis of other

1 competing plans?

2 A Right. The only comparison I can offer is the one that I
3 mentioned already in connection with the 12th District as it
4 existed in the 1990s.

5 MR. STRACH: That's all I have, Your Honor.

6 THE COURT: Redirect.

7 MR. SPEAS: Three or four quick questions, Your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MR. SPEAS:

11 Q Dr. Peterson, would you turn to, I believe, the last --
12 next to the last page of Tab 1 where -- your second affidavit,
13 Plaintiff's Exhibit 15. And is that a map of Congressional
14 District 12?

15 A I have it.

16 Q And the yellow color signifies what?

17 A Those would be inside border precincts. Those are
18 precincts which were involved in the segment analysis of the
19 12th District on the inside.

20 Q Is this district a single precinct wide for much of the
21 way?

22 A For much of the way, it is a single precinct wide, yes.

23 Q And there are interior precincts only in the city of
24 Charlotte, the city of Greensboro, and the city of
25 Winston-Salem?

1 A Yes, I believe that -- well, actually, there's a third --
2 there are four areas in which there are inside precincts.

3 Q Okay. So, while you did not examine the core precincts in
4 your segment analysis --

5 A If the pinkish ones are termed "core precincts."

6 Q Yes. The truth is, most of the precincts in Congressional
7 12 were examined?

8 A It looks like most of them did get included in the segment
9 analysis, yes.

10 Q And that's because it's a single precinct wide through
11 much of its --

12 A That's right, so they got included on the left side and on
13 the right side.

14 Q All right. And now, you -- Mr. Strach asked you about a
15 number of issues about your methodology that you used here.

16 A Yes.

17 Q Did you use precisely the same methodology in *Cromartie*
18 that you used here?

19 A I know of no differences. My intent was to use exactly
20 the same, and I believe I did use exactly the same.

21 Q Okay. And the strength of the *Cromartie* analysis are
22 reflected here, the weaknesses of the *Cromartie* analysis are
23 reflected here?

24 A Yes.

25 Q And at the end of the day, in your professional opinion as

1 an expert in applied mathematics, do you still conclude that
2 race, not politics, on balance, accounts better for the
3 boundary of the district?

4 A That is true, yes.

5 MR. SPEAS: One final question. May I approach the
6 witness, Your Honor?

7 THE COURT: You may.

8 BY MR. SPEAS:

9 Q I'm going to place in front of you, Dr. Peterson, the
10 historical congressional map book labeled Defendant's
11 Exhibit 126. And I would ask you, Dr. Peterson, just to turn
12 Tab 3 of that document. And I would ask you if that is the
13 1997 Congressional Plan that included Congressional 12
14 litigated in *Cromartie*?

15 A I don't know. It might be. I'm, at this point, not as
16 familiar with the old District 12 as once I was.

17 Q Assuming it is --

18 A All right.

19 Q -- would you look, then, at the third page, has -- it said
20 the voting-age population or that version of Congressional
21 District 12. And what is it?

22 A It says here 43.36 percent.

23 Q Okay. And if you could look quickly at Tab 12 in
24 Exhibit 126, and is that the current plan?

25 A Again, I don't know. It might well be. I don't know that

1 it's not.

2 Q Assuming it is, would you turn to the voting-age
3 population for that district and tell me what the voting-age
4 population for Congressional 12 might be?

5 A We need to specify a page for the Court, it seems to me.
6 How can we do that?

7 Q Will you read page --

8 A Page 3 of 9.

9 Q And what is the voting-age population there?

10 A It appears to be 50 point --

11 Q Sixty-six?

12 A -- sixty-six. Could be. Could be 88. But in any event,
13 it's over 50 percent.

14 Q Would it be -- if these numbers are correct, then, in the
15 version of Congressional District 12 that you examined in
16 *Cromartie*, the black voting-age population was 6 percent lower
17 than the black population in the version of Congressional
18 District 12 you have examined here?

19 A That appears to be the case.

20 MR. SPEAS: No other questions.

21 THE COURT: Anything in response?

22 MR. STRACH: Nothing in response.

23 THE COURT: You may step down.

24 MR. SPEAS: May Dr. Peterson --

25 THE COURT: Any objection to Dr. Peterson being

1 excused?

2 MR. STRACH: No, Your Honor.

3 THE COURT: All right. He may be excused.

4 THE WITNESS: Thank you.

5 (At 5:28 p.m., witness excused.)

6 THE COURT: All right. So, hopefully, we'll have
7 some air conditioning tomorrow. Should we start right in with
8 your other expert or will there be other evidence?

9 MR. HAMILTON: No, Your Honor. Our last witness.
10 Will be Dr. Steven Ansolabehere, and we'll start with him right
11 at 9:00.

12 THE COURT: All right. Very good. And then you all
13 will be ready to move along with your evidence tomorrow as
14 well?

15 MR. FARR: Yes, Your Honor.

16 THE COURT: All right. Then, anything we need to
17 take up before we recess?

18 MR. FARR: Not from the defendants, Your Honor.

19 THE COURT: All right. We'll see everybody in the
20 morning, then, at 9:00. We'll be in recess until tomorrow
21 morning at nine.

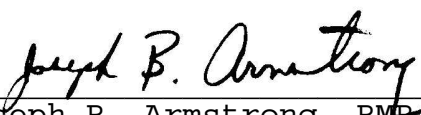
22 (At 5:29 p.m., proceedings adjourned.)
23
24
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* * * * *

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the proceedings in the above-entitled matter.

Date: 10/19/2015



Joseph B. Armstrong, RMR, FCRR
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